



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: IIC1

Title: Motion to Approve An Ordinance Approving and Authorizing the Execution of the Redevelopment Agreement by and between STC Arcada, LLC and the City of St. Charles, Kane and DuPage Counties, Illinois

Presenter: Rita Tungare

Meeting: City Council Date: November 4, 2019

Proposed Cost: Budgeted Amount: N/A Not Budgeted:

**Executive Summary** (if not budgeted please explain):

On the September 9, 2019, the Planning and Development Committee unanimously recommended approval of Redevelopment Agreement with STC Arcada, LLC pertaining to 107-109 E. Main St. (George’s building).

In accordance with the requirements of the state TIF statute, the City published a noticed regarding the intent to transfer the property for development and providing the opportunity for alternate proposals or bids to be submitted. No alternate proposals or bids were received before the submission deadline. This was read into the record at the City Council meeting on September 16, 2019.

Agreements are necessary for the site improvements proposed in the rear of the building, involving both the courtyard and private alleyway. Over the past few weeks, STC Arcada, LLC has been discussions with both the City and DB Partnership (owner of 111 E. Main St.-Riverview Counseling) to obtain the appropriate access rights to begin construction.

(A separate related item has been added to tonight’s City Council agenda to approve a Temporary Construction License over the George’s courtyard property so that the developer can proceed with the site and utility improvements now.)

The significant business terms of the Redevelopment Agreement are the same as presented previously, but with an adjustment to the dates.

Conveyance of the property to the developer upon the following conditions being met:

- Securing permits for building improvements in general conformance with the Conceptual Plans attached to the RDA draft.
- Substantial remediation of outstanding code violations at the Arcada Theater building.
- Evidence of financing secured for the project.
- Evidence of rights to construct off-site improvements shown on the plans.

Anticipated project schedule:

- The date of conveyance projected as November 30, 2019.
- Commencement of site/utility and exterior façade work within 30 days of conveyance.
- Completion target of February 14, 2020.

**Attachments** (please list):

Ordinance

**Recommendation/Suggested Action** (briefly explain):

Vote on ordinance

**City of St. Charles, Illinois**  
**Ordinance No. 2019-M-**

**An Ordinance Approving and Authorizing the Execution of the  
Redevelopment Agreement by and between STC Arcada, LLC and the City of  
St. Charles, Kane and DuPage Counties, Illinois**

WHEREAS, STC Arcada, LLC (the “Developer”) desires to enter into a redevelopment agreement (“Redevelopment Agreement”) with the City of St. Charles, Kane and DuPage Counties, Illinois (the “City”) for purposes of acquiring from the City and redeveloping of a portion of the Central Downtown Redevelopment Project Area (the “Redevelopment Area”); and

WHEREAS, on August 31, 2019, notices were published providing an invitation to all interested parties to submit alternate proposals to the City on or before 3:00 p.m., September 13, 2019, for the disposition of the City-owned real property within the Redevelopment Area proposed to be conveyed to the Developer pursuant to the terms of the proposed Redevelopment Agreement by and between the Developer and the City; and

WHEREAS, the City finds that the time period within which to submit alternate proposals was sufficient for purposes of satisfying the Tax Increment Allocation Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended (the “Act”); and

WHEREAS, no alternate proposals were submitted to the City; and

WHEREAS, the Corporate Authorities of the City find it is in the best interests of the City to enter into the Redevelopment Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, as follows:

1. That the foregoing recital clauses to this Ordinance are adopted as the findings of the Corporate Authorities of the City of St. Charles and are incorporated herein by specific reference.

2. That upon receipt from the Developer of four (4) executed copies of the Redevelopment Agreement, the Mayor is hereby authorized to execute, and the City Clerk is hereby authorized to attest to, the Redevelopment Agreement in substantially the form of such agreement appended to this Ordinance as Exhibit A, with such changes therein as shall be approved by the officials of the City executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from and after the execution and delivery of such Redevelopment Agreement.

3. That the officials, officers and employees of the City are hereby authorized to take such further actions and execute such documents as are necessary to carry out the intent and purpose of this Ordinance and of the Redevelopment Agreement.

4. That this Ordinance shall be in full force and effect upon and after its passage in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 4th day of November, 2019.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 4th day of November, 2019.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois this 4th day of November, 2019.

\_\_\_\_\_  
Raymond P. Rogina, Mayor

ATTEST:

\_\_\_\_\_  
Charles Amenta, City Clerk

Council Vote:

Ayes:

Nays:

Absent:

Abstain:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

DATE: \_\_\_\_\_

**EXHIBIT "A"**

**REDEVELOPMENT AGREEMENT**

**EXECUTION**

**CITY OF ST. CHARLES**  
**REDEVELOPMENT AGREEMENT**  
**(Georges' Building Annex to the Arcada Theater)**

This Redevelopment Agreement ("*Agreement*") is entered into this \_\_\_\_\_ day of November, 2019 ("*Effective Date*") between STC ARCADA, LLC, an Illinois limited liability company (the "*Developer*"), and the CITY OF ST. CHARLES, ILLINOIS, an Illinois home rule municipal corporation (the "*City*") (the Developer and the City are collectively referred to as the "*Parties*").

**RECITALS:**

A. **WHEREAS**, the City is a home rule unit of government in accordance with Article VII, Section 6, of the 1970 Illinois Constitution; and

B. **WHEREAS**, the City has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the City and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the City, to foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and to otherwise further the best interests of the City; and

C. **WHEREAS**, the City has undertaken a program for the redevelopment of certain property within the City, pursuant to the "Tax Increment Allocation Redevelopment Act," 65 ILCS 5/11-74.4-1 *et seq.*, as amended (the "*Act*"); and

D. **WHEREAS**, acting pursuant to the Act and after giving all notices required by law and after conducting all public hearings and meetings required by law, the City created a Redevelopment Project Area commonly known as the Redevelopment Plan and Project Area for the Central Downtown TIF, as amended (the "*Redevelopment Project Area*") by (i) Ordinance No. 2015-M-8, adopted February 7, 2015, approving a Redevelopment Plan and Project, as amended (the "*Redevelopment Plan*"), (ii) Ordinance No. 2015-M-9, adopted February 7, 2015, designating a Redevelopment Project Area, as amended, and (iii) Ordinance No. 2015-M-10, adopted February 7, 2015, confirming Tax Increment Financing for the Project Area, as amended (collectively, the "*TIF Ordinances*"); and

E. **WHEREAS**, the City has the authority to promote the health, safety and welfare of its inhabitants, to prevent the onset of blight while instituting conservation measures, and to encourage private development in order to enhance the local tax base, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes; and

F. **WHEREAS**, the City is authorized to enter into this Agreement pursuant to the Act, the City's authority as a home rule municipal unit of government and other applicable statutory and constitutional authority; and

G. **WHEREAS**, the City is the owner of the property legally described in Exhibit A, attached hereto (the "*Annex Property*"), the Developer is the owner of the property adjacent and contiguous to the Annex Property legally described in Exhibit B hereto (the "*Arcada Property*"), and, the Annex Property and Arcada Property are hereinafter collectively referred to as the "*Redevelopment Property*"; and

H. **WHEREAS**, the Redevelopment Property is located within the City and within the Redevelopment Project Area; and

I. **WHEREAS**, the Developer proposes to acquire the Annex Property and rehabilitate and redevelop the Redevelopment Property with interior and exterior renovations and improvements substantially in conformance with the Plans (as hereinafter defined) to be prepared by the Developer and approved by the City and as further described in this Agreement (the "*Project*"); and

J. **WHEREAS**, the City has agreed, in reliance on the Developer's expertise in development and commitment to construct the Project, to convey the Annex Property to the Developer as specifically set forth in this Agreement; and

L. **WHEREAS**, on August 31, 2019, pursuant to Section 11-74.4-4(c) of the Act, the City published a notice requesting alternate proposals for the redevelopment of the Redevelopment Property and did place a draft of this Agreement on file for review in the Office of the City Clerk; and

M. **WHEREAS**, the City did not receive any alternate proposals for the redevelopment of the Redevelopment Property; and

N. **WHEREAS**, the corporate authorities of the City have determined: (i) that the development and construction of the Project would be, in all respects, consistent with and in furtherance of the Redevelopment Plan, (ii) the completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement, and (iii) as a direct benefit of this Agreement and the contemplated development and construction of the Project, the equalized assessed value of the Redevelopment Property and the Redevelopment Project Area will increase; and

O. **WHEREAS**, this Agreement has been submitted to the corporate authorities of the City for consideration and review, the corporate authorities of the City have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the City according to the terms hereof, and any and all actions of the corporate authorities of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

P. **WHEREAS**, this Agreement has been submitted to the Developer for consideration and review, and the Developer has taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all actions precedent to the execution of this Agreement by the Developer have been undertaken and performed in the manner required by law.

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

1. **INCORPORATION OF RECITALS AND EXHIBITS.** The statements, representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1. The exhibits referred to in this Agreement which are attached to or incorporated into it by textual reference are incorporated by reference into and made a part of this Agreement. The Parties acknowledge the accuracy and validity of those exhibits.

2. **DEFINITIONS.** For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the recitals hereto and as follows:

"*Change in Law*" means the occurrence, after the Effective Date, of an event described below, provided (i) such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement or otherwise necessitates changes to the Project and (ii) such event is not caused by the Party relying thereon:

Change in Law means any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state, county or local law, ordinance, code, rule or regulation; (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; or (iii) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency. Change in Law, for purposes of this Agreement, shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the Project under this Agreement.

"*Plans*" means (i) the conceptual and façade rehabilitation plans for the Project as approved by the City and attached hereto as Exhibit C and made a part hereof ("*Approved Plans*"), and (ii) the plans and specifications containing the detailed plans for the Project (in its entirety, including all public and private improvements and not merely the building(s) themselves) as approved by the City prior to the issuance of any building or other permits for the Project, and any amendments thereto as approved by the Developer and the City.

"*Person*" means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

"*State*" means the State of Illinois.

"*Substantial Completion*" means the completion of the Project pursuant to the Plans, exclusive of any tenant improvements, interior finishes and open "punch list" items as evidenced by the delivery by Developer of a certificate signed by the Developer's architect or project manager certifying that the Project is substantially complete and subject to the reasonable approval of the City.

"*Uncontrollable Circumstance*" means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
  - (i) A Change in Law;
  - (ii) Insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
  - (iii) Epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
  - (iv) Third party litigation challenging the authority of the TIF Ordinances or the effectiveness of this Agreement;
  - (v) Governmental condemnation or taking or unreasonable delay in reviewing and issuing applicable permits;
  - (vi) Strikes or labor disputes, or work stoppages not initiated by the Developer;
  - (vii) Shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
  - (viii) Unknown or unforeseeable geo-technical or adverse environmental conditions or environmental regulatory action regarding the Project;
  - (ix) Major environmental disturbances;

- (x) Vandalism; or
- (xi) Terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in b (vii) above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

For each day that the City or the Developer is delayed by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day for each day of the resulting delay.

"City Code" means the City of St. Charles City Code, as amended from time to time, and all other ordinances, rules and regulations of the City.

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

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.
- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The City Administrator, or the City Administrator's designee, unless applicable law requires action by the corporate authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. The Developer and the City are entitled to rely on the full power

and authority of the Persons executing this Agreement on behalf of the Developer and the City as having been properly and legally given by the Developer or the City, as the case may be.

H. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by the Developer in a different manner, the Developer hereby designates Curt and/or Conrad Hurst, individually or their respective designee as authorized representative, each of whom shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of the Developer and with the effect of binding the Developer in that connection (either such individual being an "*Authorized Developer Representative*"). The Developer shall have the right to change its authorized Developer Representative by providing the City with written notice of such change, which notice shall be sent in accordance with Section 15.2.

#### 4. DEVELOPMENT OF THE REDEVELOPMENT PROPERTY.

Section 4.1. Project Schedule. The City and the Developer agree that the Developer's development and construction of the Project will be undertaken in accordance with the Project Schedule attached hereto as Exhibit D and made a part hereof (the "*Project Schedule*"). The Parties acknowledge that the Project Schedule is based on the Parties' best understanding of the Project and related milestones as of the Effective Date. The Parties may amend the Project Schedule as necessary to ensure that it accurately reflects the key milestones in the development and construction of the Project, and the Parties specifically agree that the milestone dates may be mutually extended by the Parties. Each Party agrees that such extensions shall not be solely based upon the existence of Uncontrollable Circumstances and shall not be unreasonably withheld for the purpose of amending the Project Schedule.

Section 4.2. Construction of Public Improvements. Subject to the conditions and terms set forth in this Agreement, the City approves and designates the Developer to construct those public improvements, if any, at Developer's cost, as represented on the Plans. The Plans, together with all general engineering plans for the Project, shall depict all public improvements, if any, including utility improvements, curbs and gutters, sidewalks, and streetscape, as required and approved by the City (collectively, the "*Public Improvements*"). All Public Improvements shall be constructed and/or installed in accordance with the Plans and the City Code as it exists at the time of filing of the application for the permit for the issuance of the building permit for the Project. The Developer in construction of all Public Improvements shall follow such procedures as shall be required by the City Code.

#### 5. CITY REDEVELOPMENT PROPERTY CONVEYANCE.

Section 5.1. Redevelopment Property. Subject to the City's satisfaction or waiver of the conditions precedent of this Agreement, and payment by the Developer to the City at closing of the Annex Property of the nominal sum of Ten Dollars (\$10.00) ("*Purchase Price*"), the City will convey the Annex Property to the Developer in the manner set forth herein and so that the

Developer is able to build and complete and operate the Project. The conveyances of the Annex Property as generally described in this Section and provided in this Agreement shall be undertaken in accordance with the closing date described in the Project Schedule and the other applicable provisions of this Agreement. The conveyance of the Annex Property under this Agreement shall be as follows:

A. Closing Contingencies. The City currently holds title to the Annex Property. So long no Event of Default exists with regard to the Developer hereunder beyond dates for cure as permitted herein, the City agrees, subject to the terms and conditions in this Agreement, to convey the Annex Property to the Developer, conditioned upon the following (the “*Closing Contingencies*”):

(i) Developer having substantially completed the correction and /or remediation of those City code violations for the Arcada property as listed on the Notice of Violation issued by the City dated September 3, 2019. Determination of substantial completion and approval shall be made at the discretion of the City Administrator or his designee;

(ii) pursuant to the Plans, the Developer securing any and all zoning entitlements, variances, subdivision approvals, and permits from the City, state, county and any other regulatory body required to commence construction of the Project;

(iii) at Closing, the Developer will open and record its Construction Loan (as defined herein), which shall be open for funding upon customary disbursement procedures and sufficient in amount, when added to the upfront equity of the Developer (the “*Developer Equity Contribution*”) to complete construction of the Project, as reasonably determined by the City;

(iv) the Developer has provided the City with satisfactory written evidence of the full investment of the Developer Equity Contribution; and

(v) the Developer has provided the City with satisfactory written evidence of an agreement with adjoining property owner(s) securing the right to construct certain off-site improvements to serve the Project.

B. Developer’s Investigation Contingency. For a period of thirty (30) days after the Effective Date (the “*Investigation Contingency Period*”), this Agreement is contingent upon the Developer, at its sole cost and expense, having the right to conduct, or cause to be conducted, any reviews, inspections, investigations, appraisals, evaluations and tests of the Annex Property that the Developer deems necessary or desirable (collectively, the “*Investigations*”).

C. Developer’s Right to Terminate. The Developer shall have the right to terminate this Agreement upon notification to the City on or prior to the termination of the Inspection Period that, in the Developer’s sole discretion, the results of the Investigations are not satisfactory to the Developer.

Section 5.2. Title Commitment. Within fifteen (15) days after the Effective Date, City will deliver to Developer a commitment for an owner's title insurance policy (2006 Form B), with extended coverage (the "*Title Commitment*") issued by Chicago Title Insurance Company (the "*Title Company*") in the amount of the Purchase Price, covering title to the Annex Property on or after the Effective Date, showing fee simple title vested in the City, accompanied by all documents and instruments reflected in Schedule B thereto as affecting the Annex Property (the "*Title Documents*").

Section 5.3. Survey. The City has provided its existing survey, if any, of the Annex Property. Within the Investigation Contingency Period, Developer shall obtain, at Developer's sole cost and expense, an ALTA/NSPS Land Title Survey (with Table A options as required by Developer), prepared and certified by a licensed or registered Illinois land surveyor to Developer, the Title Company and Developer's lenders in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (the "*Survey*").

Section 5.4. Correction of Title and Survey Defects. Within fifteen (15) days after receipt of the last of the Title Commitment, Title Documents and Survey, the Developer shall provide to the City in writing a specific list of the Developer's objections to any of them ("*Title Objections*"). Except as set forth below, any item constituting an encumbrance upon or adversely affecting title to the Annex Property which is not objected to by the Developer in writing by such time shall be deemed approved by the Developer and shall constitute a Permitted Exception (as hereinafter defined). Any mortgages, security interests, financing statements, or any other lien recorded against the Annex Property following the Agreement Date with the consent or acquiescence of the City are collectively referred to as the "*Consensual Liens*" and none of such Consensual Liens shall constitute, be or become Permitted Exceptions. The City shall cause all Consensual Liens, if any, to be paid and discharged in full at closing and in the event the City fails to do so, the Developer shall have the right to deduct and apply so much of the Purchase Price as is reasonably required to do so. The phrase "*Permitted Exceptions*" shall mean those exceptions to title set forth in the Commitment, Title Documents and Survey and accepted or deemed approved by the Developer pursuant to the terms hereof, except Consensual Liens as provided above, which shall not constitute Permitted Exceptions. The City shall have the right, but not the obligation, for a period of twenty-one (21) days after receipt of the Developer's Title Objections (the "*Cure Period*") to cure (or commit to cure at or prior to closing) by delivery of written notice thereof to the Developer within the Cure Period any or all Title Objections contained in the Developer's notice. If any such Title Objections are not cured (or, if reasonably capable of being cured, the City has not committed to cure same at or prior to closing) within the Cure Period, or if the City sooner elects not to cure such Title Objection by written notice to the Developer, the Developer shall have until the earlier of the expiration of the Cure Period or five (5) days after the receipt of such written notice within which to give the City written notice that the Developer elects either (y) to waive all such uncured objections (in which case the uncured objections shall become Permitted Exceptions); or (z) terminate this Agreement. If the Developer does not deliver such written notice within the above period, the Developer shall be deemed to have terminated this Agreement, in which case neither Party shall have any further obligations to the other hereunder (except any obligations which this Agreement provides survive termination).

Section 5.5. General Title and Survey Provisions. City will pay any fee the Title Company charges for issuing the Title Commitment, including any date down fee, and will also pay the premium the Title Company charges for the Owner's title insurance policy, with extended coverage, and any endorsements needed to insure over Title Objections, Consensual Liens and other matters not constituting Permitted Exceptions. City will also pay any separate title examination charges and the recording fees for any mortgage or other encumbrance releases. Developer will pay all loan policy premiums and recording fees for the deed conveying the Property and Developer's mortgage documents, and all other title insurance endorsements that Developer requests.

Section 5.6. Conveyance. Subject to the satisfaction of all of the Closing Contingencies, the City shall convey to the Developer merchantable, insurable, fee simple title to the Annex Property by Special Warranty Deed. The conveyance of the Annex Property shall be closed through a New York style deed and money escrow with the Title Company serving as escrow agent. The City and the Developer will execute the standard form of New York style deed and money escrow instructions then in use by the Title Company, modified as necessary to conform to the terms of this Agreement. The attorneys for the City and the Developer are authorized to execute the escrow agreement and amendments thereto and all directions or communications thereto, as well as any other documents necessary to effectuate the conveyance of the Annex Property. All fees and costs of the escrow shall be split equally between the City and the Developer. The Developer shall have the right to possession thereof at the time of closing or conveyance. All assessments, general or special, which are due and payable in arrears after the closing, and assessments for improvements completed prior to such closing but payable after such closing shall be prorated at such closing. Ad valorem real estate taxes for the Annex Property, if not otherwise exempt, will be prorated at 105% of the most current available assessed value, equalization factor and tax rate between the Developer and the City as of the closing date. The City's portion of the prorated taxes will be credited to the Developer at closing as an adjustment to the Purchase Price. If the assessment(s) for the year of closing and/or prior years are not known at the closing date, the prorations will be based on taxes for the previous tax year. Such other items that are customarily prorated in transactions of this nature, if any, shall be ratably prorated. For purposes of calculating prorations, the Developer shall be deemed to be in title to the Annex Property on the closing date. All such prorations shall be made on the basis of the actual number of days of the year and month, which shall have elapsed as of such closing date. The amount of the ad valorem real estate tax proration shall be adjusted in cash after such closing as and when the final tax bill for such period(s) becomes available. The City and the Developer agree to cooperate and use their diligent and good faith efforts to make such adjustments no later than sixty (60) days after such information becomes available.

Section 5.7. Closing. At closing, the City and/or the Developer, as is customary, shall deliver or cause to be delivered the following, in form and substance reasonably acceptable to the Parties:

- A. A Special Warranty Deed, executed by the City, in recordable form, conveying the Annex Property to the Developer;

B. An Affidavit of Title and ALTA Statement;

C. A title policy (or "marked up" title commitment) issued by the Title Company dated as of the date of closing in the nominal amount of One Hundred Thousand Dollars (\$100,000.00), with extended coverage, at the City's cost, and such endorsements as the Developer shall require, at the Developer's cost, and said title policy or "marked up" commitment shall be otherwise in accordance with the requirements herein (it being understood that both Parties will provide any certificate or undertakings required in order to induce the Title Company to insure for any "gap" period resulting from any delay in recording of documents or later-dating the title insurance file);

D. Completed City, State and County Transfer Declarations marked exempt;

E. Reconveyance Special Warranty Deed ("*Reconveyance Deed*") executed by the Developer to the City, to be held in escrow by the Title Company (the "*Reconveyance Escrowee*"), providing for the reconveyance to the City or the release of the Reconveyance Deed to Developer as provided for in Section 5.7I of this Agreement; and

F. Such other documents and instruments as may reasonably be required by the Title Company and which may be necessary to consummate this transaction and to otherwise effect the agreements of the Parties hereto.

G. In the event of a failure to close the sale of the Annex Property on or before the earlier of December 31, 2019 or thirty (30) days after the satisfaction of the latest to occur of the Closing Contingencies, whichever is earlier, either Party shall, by written notice to the other, have the right to terminate this Agreement.

H. Within thirty (30) days following the conveyance by the City of the Annex Property, the Developer shall commence construction of site and utility work and exterior façade rehabilitation for the Project, pursuant to the plans and approved permits ("*Developer Commencement*"). If the Developer fails to comply with the requirements set forth in the previous sentence, the City shall have the option, in addition to any and all remedies available to it under this Agreement, exercise upon written notice to the Developer, to have the Redevelopment Property, together with any improvements thereon, if any, reconveyed to the City for no consideration and with no claim against the City for work performed by the Developer on the Redevelopment Property, which shall be at Developer's sole cost and expense, free and clear of any liens and encumbrances created by the act or default of the Developer, with taxes, water, sewer and other utility charges prorated as of the date of such reconveyance, and/or terminate this Agreement. Upon Developer Commencement, and upon inspection and confirmation by the City, the City shall provide its written direction to the Reconveyance Escrowee to release the Reconveyance Deed to or at the direction of the Developer.

I. Upon written request by Developer, and providing the City with evidence of its commercially diligent effort to comply with any of the time requirements as set

forth herein, the City may extend any of the time requirements, such grant of extension not to be unreasonably withheld, conditioned or delayed. Time periods resulting from delays attributable to Uncontrollable Circumstances shall be extended as set forth herein.

Section 5.8. AS-IS Condition. This Agreement is an arms-length agreement between the Parties. Except as expressly provided herein to the contrary, the conveyance of the Annex Property to the Developer is "as is, where is" and reflects the agreement of the Parties that there are no representations, disclosures, or express or implied warranties. **SUBJECT TO THE TERMS OF THIS AGREEMENT, THE DEVELOPER IS PURCHASING THE ANNEX PROPERTY AND, EXCEPT AS SET FORTH HEREIN, THE ANNEX PROPERTY SHALL BE CONVEYED AND TRANSFERRED TO THE DEVELOPER "AS IS, WHERE IS, AND WITH ALL FAULTS," AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES OR GUARANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF THE CITY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING EXCEPT AS SET FORTH HEREIN, THE CITY HAS NOT MADE, AND DOES NOT AND WILL NOT MAKE WITH RESPECT TO THE ANNEX PROPERTY, ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT IN NO WAY LIMITED TO, ANY WARRANTY OR CONDITION, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR WITH RESPECT TO THE VALUE, PROFITABILITY, BUILDABILITY, MORTGAGEABILITY OR MARKETABILITY OF THE ANNEX PROPERTY, OR THE PRESENCE OF HAZARDOUS MATERIALS THEREIN, THEREON, OR THEREUNDER, WHICH WARRANTIES ARE HEREBY DISCLAIMED.**

The Developer has had, and will have pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigations as the Developer deems necessary, desirable or appropriate with respect to the Annex Property. Such inquiries and investigations of the Developer shall be deemed to include, but shall not be limited to, the physical and environmental condition of the Annex Property, the suitability of the Annex Property for the Project, such state of facts as an accurate survey and inspection of the Annex Property would show, and all zoning and other codes, ordinances and regulations of any governmental entity applicable to the ownership, maintenance or operation of the Annex Property.

Section 5.9. City Reports. To the best of its knowledge, the City has delivered or made available to the Developer copies, if any, of all environmental reports, studies or other information relating to the Annex Property that the City has in its files, if any (the "Reports"). The City makes no warranties or representations regarding the contents of such Reports. The Developer hereby unconditionally and irrevocably waives and releases the City from and against any liability or claim related to the Reports and the accuracy or completeness of the information contained therein. The Developer acknowledges that it shall not rely on the Reports or the information contained, and has conducted or shall conduct its own continuing environmental due diligence with respect to all matters and information otherwise relating to the Annex Property and the environmental condition thereof. 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 Redevelopment Property or anywhere within the Annex Project Area 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. §§ 961-9657, 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 Annex Property, as well as any activity claimed to have been undertaken on or in the vicinity of the Annex Property that would cause or contribute to causing (1) the Annex Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Redevelopment Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 691 *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, onto or from the Annex Property within the meaning of, or otherwise bring any Redevelopment 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 of any substances or conditions in or on the Annex 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 Annex Property, or whether any above or underground tanks have been located under, in or about the Annex Property and have subsequently been removed or filled. The Developer (i) waives and releases any and all claims against the City for indemnification, contribution, reimbursement or other payments arising under federal, state and common law or relating to the environmental condition of the Annex Property, and (ii) holds harmless and indemnifies the City against any and all loss, damage, claims, demands, suits, costs, expenses (including reasonably attorney fees) whatsoever arising or in any way related to the environmental condition and/or remediation of any contamination of the Annex Property.

6. INTENTIONALLY OMITTED.

7. DEVELOPER COMMITMENTS, COVENANTS, REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS. In consideration of the City's substantial commitment to the redevelopment of the Redevelopment Property and its commitments contained in this Agreement, the Developer agrees, represents, warrants and covenants with and to the City as follows and elsewhere in this Agreement:

Section 7.1. Plans and Compliance with Applicable Laws. The Developer shall construct the Project in material conformance with this Agreement, the Plans and City Code.

The Developer shall at all times acquire, install, construct, operate and maintain the Project in conformance with the City Code. All work with respect to the Project shall conform to all applicable federal, state, and county regulations and ordinances.

Section 7.2. Construction of the Project.

A. The Developer shall apply for, diligently pursue and secure all required permits and approvals for the Project pursuant to the Project Schedule. The City shall cooperate with the Developer in approving necessary City permits after submission of a complete application, which complies in all respects with all applicable laws, ordinances, regulations and this Agreement. Should the City reject any submitted building permit applications for failure to comply with the Plans, the Developer shall, within twenty-one (21) business days, or such other reasonable time, after receiving written notice thereof, cause new or corrected documents to be prepared and submitted to the City. This process, within the time frames herein stipulated, shall be repeated as often as may be necessary until the documents are in compliance with the Plans and applicable laws and ordinances, except that all submittals after the initial submittal shall be reviewed by the City within such shorter period as may be reasonably practical. Any errors or omissions of the City in the review of and comments provided in response to the submittals shall not constitute a waiver of the application of the City's ordinances and regulations related to the Project.

B. To the extent required and permitted by law, the Developer shall comply with the Prevailing Wage Act (for purposes of this Section, the "Prevailing Wage Act") of the State of Illinois, 820 ILCS 130/0.01 *et seq.*, as amended. The Developer agrees to indemnify, hold harmless, and defend the City, its governing body members, officers, and agents, including independent contractors, consultants and legal counsel, servants and employees thereof ("Indemnified Parties") against all loss, cost, damage, judgments, awards, fines or interest sustained by the Indemnified Parties resulting from any regulatory actions, complaints, claims, suits, liabilities, liens, judgments, including reasonable attorneys' fees, to the extent caused by noncompliance with the Prevailing Wage Act, including, but not limited to a complaint by the Illinois Department of Labor under Section 4(a-3) of the Act, 820 ILCS 130/4(a-3). The indemnification obligations of this Section on the part of the Developer shall survive the termination or expiration of this Agreement. In any such claim, complaint or action against the Indemnified Parties, the Developer shall, at its own expense, appear, defend and pay all charges of reasonable attorney's fees and all reasonable costs and other reasonable expenses arising therefrom or incurred in connection therewith.

C. The Developer shall grant, dedicate or convey any and all public easements on the Redevelopment Property in order to provide for all required Project Public Improvements, if any, and as may be shown in the Plans, including but not limited to rights-of-way, sidewalks, street lights, streetscape, water mains, storm and sanitary sewer mains, gas, electricity, and cable television. The Parties shall coordinate said conveyances with all applicable utility companies and other applicable governmental bodies and/or agencies.

D. The Developer shall prepare, file and secure approval by the City of any and all required plats of consolidation, resubdivision, or vacation as may be required by City Code, or otherwise, to effectuate the terms of this Agreement for the Project.

E. The Developer shall convey by Bill of Sale, free and clear title to any Public Improvements as may be depicted on the Plans.

F. In the event the Developer elects to park and stage construction equipment, materials and vehicles other than on the Redevelopment Property, the City shall have the right to reasonably approve such locations. The Developer shall stage its construction of the Project to avoid to the fullest extent possible any such community disruption. During construction, the Developer shall on a daily basis keep all streets immediately adjacent to the Project free of any construction-related debris. Notwithstanding the foregoing, the City shall permit Developer the exclusive right to erect and maintain signage on the Annex Property from and after the Effective Date for the announcement and marketing of the Project. Should this transaction fail to close on or before December 31, 2019, Developer shall thereafter immediately remove its signage. The City shall cause any other signage not attributable to the Project to be removed from the Annex Property.

### Section 7.3. Representations, Warranties and Undertakings of the Developer.

A. The Developer hereby represents and warrants that it is an Illinois limited liability company duly organized and existing and in good standing 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 financial able to perform all the terms of this Agreement. To the Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against the Developer which would result in any material and adverse change to the Developer's financial condition, or which would materially and adversely affect the level of the Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of the Developer to proceed with the construction and development of the Project. The Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company, so long as the Developer has any obligations pursuant to the terms of this Agreement. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by Developer of this Agreement.

B. Developer hereby represents and warrants that neither the execution and delivery of this Agreement by the Developer, the consummation of the transactions contemplated hereby by the Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by the 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 the Developer (with the Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which the Developer or any of its partners or venturers is now a party or by which the Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of the Developer, any related party or any of its venturers under the terms of any instrument or agreement to which the Developer, any related party or any of its partners or venturers is now a party or by which the Developer, any related party or any of its venturers is bound.

C. The Developer hereby represents and warrants that it has sufficient financial and economic resources to implement and complete the Developer's obligations contained in this Agreement. The Developer has or will obtain a firm commitment from a financial institution providing all monies needed through third party financing or alternatively will provide proof of access to sufficient funds pursuant to the terms of this Agreement. Developer has not experienced a materially adverse change in the business, financial position or results of its operations that could reasonably be expected to adversely affect Developer's ability to perform its obligations pursuant to this Agreement.

D. The Developer hereby represents and warrants that it shall comply with all applicable laws, rules and regulations having material applicability to the construction, use and occupancy of the Project of the State of Illinois, the County of Kane and the United States of America, and any and all agencies or subdivisions thereof, and all other governmental bodies and agencies having jurisdiction over the Redevelopment Property.

E. The Developer represents and warrants that it shall comply in all material respects with all terms, provisions and conditions, and that it shall not permit a continuing default, beyond periods of cure and grace, to exist under any document or agreement relating to the Project or the financing and development of the Project, including but not limited to this Agreement, and all agreements and documentation executed and delivered in connection with any financing or loans for the Project, to the extent that such default would have a material adverse effect on the construction, development and opening of the Project.

F. The Developer agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Developer's sound legal discretion.

G. The Developer hereby represents and warrants that no officer, member, manager, stockholder, employee or agent, or any other Person connected with the Developer, has knowingly made, offered or given, either directly or indirectly, to any member of the corporate authorities, or any officer, employee or agent of the City, or any other Person connected with the City, any money or anything of value as a gift or bribe or

other means of influencing his or her action in his or her capacity with the City, to the extent prohibited under applicable law.

H. The Developer hereby represents and warrants that, as of the date of this Agreement, the cost of the Project is anticipated to be not less than \$1,567,000.00, pursuant to and as estimated by the Project Budget, pursuant to Exhibit F, attached hereto and made a part hereof.

I. The Developer hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that may at any time be lawfully finally assessed and payable with respect to the Project and/or the Annex Property. Following substantial completion of the Project and at all times when the TIF Ordinances shall be in effect for the Annex Property, the Developer, its successors and assigns, agrees that it will not protest, object to or otherwise (i) petition for a reduction to any real estate tax assessment attributable to the Annex Property and/or Project in any manner that would reduce the assessed value of the Annex Property and/or Project for real estate tax years through and including December 31, 2038, or (ii) seek a refund of the general *ad valorem* real estate taxes attributable to the Annex Property and/or Project for real estate tax years through and including December 31, 2038. Notwithstanding the foregoing, in the event the assessed valuation of the Annex Property and/or Project is (i) materially inconsistent with similarly situated property or (ii) increases more than ten (10%) percent in any calendar tax year, the Developer may, upon prior notice to and written consent from the City, protest the assessed value of the Annex Property and/or Project.

J. In accordance with Illinois law, 50 ILCS 105/3.1, simultaneously with the execution of this Agreement by the Parties, the Developer or an authorized managing member thereof shall submit a sworn affidavit to the City disclosing the identity of every owner and beneficiary who has any interest, real or personal, in the Project, and every shareholder entitled to receive more than 7 ½ % of the total distributable income of any corporation after having obtained such an interest in the Project or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the Developer or its managing agent that there is no readily known individual who has a greater than 7 ½% interest, real or personal, in the Developer or the Project. The sworn affidavit shall be substantially similar to the one described in Exhibit G, attached hereto and made a part of this Agreement. Said affidavit shall be updated, as necessary.

8. REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

Section 8.1. Organization and Authority. The City is a municipal corporation duly organized and validly existing under the laws of the State of Illinois, is a home rule unit of government, and has all requisite corporate power and authority to enter into this Agreement.

Section 8.2. Authorization. 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 (i) have been duly authorized by all necessary corporate action on the part of the City, (ii) 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 (iii) 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 8.3. Litigation. To the best of the City's knowledge, there are no proceedings pending or threatened against or affecting the City or the TIF District in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the City to perform its obligations under this Agreement.

## 9. INSURANCE.

Section 9.1. Project Insurance. The Developer, and any successor in interest to the Developer, shall, after conveyance of the portions of the Redevelopment Property to be conveyed to the Developer under this Agreement, until construction of the Project is complete, obtain or cause to be obtained and continuously maintain insurance on the Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain:

A. From the commencement of any construction of the Project until issuance of the Certificates of Substantial Completion, Developer shall procure and maintain:

(i) *Workers Compensation and Employers Liability Insurance.* 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 \$1,000,000.00 each accident or illness.

(ii) *Commercial General Liability Insurance.* Commercial General Liability Insurance with not less than \$2,000,000.00 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. The City is to be named as an additional insured on a primary, non-contributory basis.

(iii) *Automobile Liability Insurance.* Commercial Automobile Liability Insurance, covering all owned, non-owned, and hired vehicles, including the loading and unloading thereof, with limits not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The City is to be named as an additional insured on a primary, non-contributory basis.

(iv) *All Risk/Builders Risk.* When Developer undertakes any construction, 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.

(v) *Valuable Papers.* When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount sufficient to pay for the recreation, reconstruction, or restoration of any and all records related to the Project.

(vi) *Independent Contractors and Subcontractors.* 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. 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 sixty (60) 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 Developer and City named insureds.

C. Within thirty (30) days of the Effective Date, Developer shall furnish the City with a certificate(s) of insurance effecting coverage as required under this Section 11. 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.

D. Any deductibles or referenced insurance coverages must be borne by Developer or its independent contractors or subcontractors.

E. The insurance requirements set forth in this Section 9 shall in no way limit or be used to offset against Developer's indemnification obligations under this Agreement.

## 10. INDEMNIFICATION AND LIMITATION OF LIABILITY.

Section 10.1. Indemnification. The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "*Indemnified Parties*") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss, damage, claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer and its officers, employees, agents and/or contractors (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project ("*Indemnified Claims*"); provided, however, that the Developer's indemnity under this Section shall be reduced to the extent the Indemnified Claims are caused, if at all, by the willful misconduct or gross negligence on the part of the Indemnified Parties or to the extent the Indemnified Claims are caused, if at all, by the City's failure to comply with any material requirement of this Agreement or other applicable law and the Developer's indemnification pursuant to this Section expressly does not include any claims from third-parties challenging or relating to the City's authority to create and establish the Redevelopment Project Area.

Section 10.2. Limitation of Liability. No recourse under or upon any obligation, covenant or condition in this Agreement, or for any claim based thereon or otherwise related thereto, shall be had against the City, or its officers, officials, agents and/or employees, in any amount in excess of any specific sum agreed by the City to be paid to the Developer hereunder, subject to the terms and conditions set forth herein, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by, the City, or its officers, officials, agents and/or employees, in excess of such amounts and any and all such rights or claims of the Developer against the City, or its officers, officials, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the City.

## 11. EVENTS OF DEFAULT AND REMEDIES.

Section 11.1. Developer Events of Default. The following shall be Events of Default with respect to this Agreement:

A. If any material representation made by the Developer in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made.

B. Failure of the Developer to comply with any material covenant or obligation contained in this Agreement, or any other agreement, financing or otherwise, concerning the Project, the Redevelopment Property, or the existence, structure or financial condition of the Developer.

C. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the 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 the Developer for any substantial part of its Redevelopment 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 thirty (30) consecutive days.

D. The Developer: (i) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its or their property; or (ii) is adjudicated a bankrupt; or (iii) files a petition in bankruptcy or to effect a plan or other arrangement with all of its creditors; or (iv) files an answer to a creditor's petition (admitting the material allegations thereof) for an adjudication of bankruptcy or to effect a plan or other arrangement with all of its creditors; or (v) applies to a court for the appointment of a receiver for its assets; or (vi) has a receiver or similar official appointed for its assets, or, if such receiver or similar official is appointed without the consent of the Developer and such appointment shall not be discharged within thirty (30) days after his appointment or the Developer has not bonded against such receivership or appointment; or (vii) a petition described in (iii) is filed against the Developer and remains pending for a period of ninety (90) consecutive days, unless the same has been bonded, and as a result thereof, the Developer ceases to operate; or (viii) files any lawsuit, claim and/or legal, equitable or administrative action affecting the City's ability to collect any such sales tax revenue hereunder.

E. The Developer abandons the Project on the Annex Property. Abandonment shall be deemed to have occurred when work stops on the Redevelopment Property for more than thirty (30) consecutive days for any reason other than: (i) Uncontrollable Circumstances, (ii) if the Developer is ahead of its planned construction schedule on the Project Schedule, or (iii) work stoppage caused by an action or inaction of the City that is not in compliance with the terms of this Agreement.

F. The Developer materially fails to comply with applicable governmental codes and regulations with respect to the Project and the City Codes in relation to the construction and maintenance of the buildings contemplated by this Agreement.

Section 11.2. City Events of Default. The following shall be Events of Default with respect to this Agreement:

A. If any representation made by the City in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to

the Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an event of default only if the City does not remedy the default within thirty (30) days after written notice from the Developer.

B. Default by the City in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the City; provided, however, that such default or breach shall constitute an event of default only if the City does not, within thirty (30) days after written notice from the Developer, initiate and diligently pursue appropriate measures to remedy the default, or if the City fails to cure such default within ninety (90) days of written notice of such default.

Section 11.3. Remedies of Default. In the case of an event of default hereunder:

A. The defaulting party shall, upon written notice from the non-defaulting party, take immediate action to cure or remedy such event of default. If, in such case, any monetary event of default is not cured within thirty (30) days, or if in the case of a non-monetary event of default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such event of default or breach shall not be cured or remedied within a reasonable time, but in no event more than ninety (90) additional days after receipt of such notice, unless extended by mutual agreement, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Agreement.

B. In case the City shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, the Developer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the City shall continue as though no such proceedings had been taken.

C. In the case of an event of default by the Developer, and its failure to cure such default after due notice and within the time frames provided for in this Agreement, in addition to any other remedies at law or in equity, the City may terminate this Agreement and upon such termination shall be relieved of its obligations under this Agreement, including but not limited to its obligation to convey any land to the Developer.

D. In the case of an event of default by the City and its failure to cure such default after due notice and within the time period provided for in this Agreement, in addition to any other remedies at law or equity, including but not limited to the right of specific performance, the Developer may terminate this Agreement and upon such termination shall be relieved of its obligations under this Agreement.

Section 11.4. Attorney's Fees. In the event any action is commenced by either party to this Agreement for the interpretation or enforcement of this Agreement the Prevailing Party shall be entitled to reasonable attorney's fees and costs assessed against the non-prevailing party. In the event any action is commenced by any party who is not a party to this agreement each party shall pay its own attorney's fees in such action.

Section 11.5. No Waiver by Delay or Otherwise. Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific event of default be considered or treated as a waiver of the rights by the waiving Party of any future event of default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

Section 11.6. Rights and Remedies Cumulative. Except as may be specifically provided for in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same event of default.

12. PROJECT AUDIT. Upon reasonable notice, the City and its representatives and consultants shall have access to all portions of the Project during reasonable times for the term of this Agreement. Upon reasonable notice, the City and its representatives and consultants shall have access to all books and records relating to the private financing of the Project, the Annex Property and the Redevelopment Project Costs with respect thereto, including but not limited to the Developer's financing commitments, loan statements, general contractor's and contractor's sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices. These records shall be available for inspection, audit and examination.

13. MISCELLANEOUS PROVISIONS.

Section 13.1. Cancellation. In the event the Developer or the City shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Redevelopment Plan, including the Developer's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the City in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the City in connection with the Project shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Redevelopment Plan or the covenants and Agreements or rights and privileges of the Developer or the City, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect

to that portion of the Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the City terminates this Agreement pursuant to this Section 13.1, to the extent it is then appropriate, the City, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to the Developer for buildings permitted and under construction to the extent permitted by said court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded, properly executed document.

Section 13.2. Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) electronic communications, whether by electronic mail between 9:00 a.m. and 5:00 p.m. CST Monday through Friday, (c) overnight courier, (d) registered or certified first class mail, postage prepaid, return receipt requested, or (e) priority mail with delivery confirmation.

If to City:	City of St. Charles Attn: City Administrator Two East Main Street St. Charles, Illinois 60174 <a href="mailto:mkoenen@stcharlesil.go">mkoenen@stcharlesil.go</a>
With a copy to:	John M. McGuirk Hoscheit, McGuirk, McCracken & Cuscaden, PC 1001 East Main Street, Suite G St. Charles, Illinois 60174 <a href="mailto:jmc@hmcpc.com">jmc@hmcpc.com</a>
With a copy to:	Nicholas S. Peppers Storino, Ramello & Durkin 9501 West Devon Avenue, Suite 800 Rosemont, Illinois 60018 <a href="mailto:npeppers@srd-law.com">npeppers@srd-law.com</a>
If to Developer:	STC Arcada, LLC c/o: Frontier Development, LLC 4N316 Route 31 St. Charles, IL 60174 E-Mail: <a href="mailto:curt@frontierdevelopment.com">curt@frontierdevelopment.com</a> E-Mail: <a href="mailto:conrad@frontierdevelopment.com">conrad@frontierdevelopment.com</a>
With a copy to:	William Mitchell Meltzer Purtill & Stelle LLC 300 South Wacker Drive, Suite 2300 Chicago, Illinois 60606 <a href="mailto:wmitchell@mpslaw.com">wmitchell@mpslaw.com</a>

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

Section 13.3. Time of the Essence. Time is of the essence of this Agreement.

Section 13.4. Integration. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

Section 13.5. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

Section 13.6. Recordation of Agreement. The Parties agree to record a memorandum of this Agreement, executed by the then current owners of the Redevelopment Property in the appropriate land or governmental records. The Developer shall pay the recording charges.

Section 13.7. Severability. If any provision of this Agreement, or any section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

Section 13.8. Choice of Law, Venue and Waiver of Trial by Jury. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Venue for any legal proceeding of any kind arising from this Agreement shall be in the Circuit Court of Kane County, Illinois. The Parties hereto waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties against the other on any matters whatsoever arising out of or in any way connected with this Agreement, or for the enforcement of any remedy.

Section 13.9. Entire Contract and Amendments. This Agreement (together with the exhibits attached hereto) is the entire contract between the City and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and the Developer and may not be modified or amended except by a written instrument executed by the Parties hereto, unless otherwise provided in this Agreement.

Section 13.10. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the City and the Developer or permitted assign, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to

either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever, except as specifically provided otherwise herein.

Section 13.11. Waiver. Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 13.12. Cooperation and Further Assurances. The City and the Developer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 13.13. Covenants Run with the Land/Successors and Assigns. It is intended that the covenants, conditions, agreements, promises, obligations and duties of each party as set forth in this Agreement shall be construed as covenants and that, to the fullest extent legally possible, all such covenants shall run with and be enforceable against both the covenanted and the Annex Property. Such covenants shall terminate upon termination or expiration of this Agreement. This Agreement shall inure to the benefit of, and shall be binding upon each Developer and each Developer's respective successors, grantees and assigns, and upon successor corporate authorities of the City and successor municipalities.

Section 13.14. No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any person to create the relationship of a partnership, agency or joint venture between or among such Parties.

Section 13.15. No Personal Liability of Officials of the City or the Developer. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the corporate authorities, City Administrator, any elected official, officer, partner, member, director, agent, employee or attorney of the City or the Developer, in his or her individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the City or the Developer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

Section 13.16. 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 13.17. Term. The provisions of this Agreement shall run with and bind the Redevelopment Property and shall inure to the benefit of, be enforceable by, and obligate the City, the Developer, and any of their respective grantees, successors, assigns and transferees, including all successor legal or beneficial owners of all or any portion of the Redevelopment Property commencing with the Effective Date and expiring upon December 31, 2041, being three (3) years following the expiration of the Redevelopment Project Area ("*Term*").

Section 13.18. Estoppel Certificates. Each of the Parties hereto agrees to provide the other, upon not less than thirty (30) business days prior request, a certificate ("*Estoppel Certificate*") certifying that this Agreement is in full force and effect (unless such is not the case, in which such Parties shall specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, it shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.

Section 13.19. Brokers' Commissions. The Developer and the City each represent to the other that it has not engaged the services of any finder or broker with respect to the sale and purchase of the Redevelopment Property and/or any land related to the Project and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the acquisitions of any portion of the Redevelopment Property, and each agrees to hold the other harmless from such commissions or fees as are found to be due from the Party making such representations.

Section 13.20. Nature, Survival and Transfer of Obligations. Prior to issuance of a certificate of occupancy (temporary or permanent) with respect to the Project, Developer may not assign its interest in this Agreement or voluntarily convey the Redevelopment Property without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, the City hereby consents to any conveyance of the Project (i) to any entity in which Developer holds a controlling or managing interest, and (ii) to the holder of any mortgage, deed of trust or similar financing instrument in consequence of any foreclosure or deed in lieu of foreclosure or similar transaction, and to any subsequent transferee thereof.

Section 13.21. Collateral Assignment. It is understood and acknowledged that the Developer intends to obtain construction financing (the "*Construction Loan*") for the Project and that the construction lender ("*Lender*") typically requires a collateral assignment of any relevant development agreement. If such financing is obtained and if the Lender requires such a collateral assignment, the City hereby consents to the assignment of this Agreement to the Lender's collateral security for the Construction Loan and will execute and delivery any usual and customary consent and acknowledgment agreement with such provisions as may be

reasonably requested by the Lender in connection therewith, but the Lender, in the event of any foreclosure or deed in lieu, shall take subject to the provisions of this Agreement and will remain subject to any zoning and building approvals applicable to the Project.

Section 13.22. Termination. Each party shall be solely responsible, and each party hereby waives any claims against the other, for any and all costs and expenses incurred as a result of negotiating and entering into this Agreement and the undertakings associated therewith, including but not limited to the zoning entitlements resulting in the Plans.

[SIGNATORY PAGE FOLLOWS IMMEDIATELY]

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

**CITY:**

**CITY OF ST. CHARLES,**  
An Illinois municipal corporation

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

**[CITY SEAL]**

**DEVELOPER:**

**STC ARCADA, LLC**  
An Illinois limited Liability Company

By: \_\_\_\_\_  
\_\_\_\_\_,  
its \_\_\_\_\_

**ACKNOWLEDGEMENTS**

STATE OF ILLINOIS        )  
                                          )  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Raymond Rogina, personally known to me to be the Mayor of the City of St. Charles, Kane County, Illinois, and Nancy Garrison, personally known to me to be the City Clerk of said municipal corporation, 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 Mayor and City Council of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_ day of November, 2019.

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

STATE OF ILLINOIS        )  
                                          )  
COUNTY OF COOK        )

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 STC ARCADA, LLC, 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 Illinois limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_ day of November, 2019.

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

## **INDEX OF EXHIBITS**

Exhibit A	Legal Description of Annex Property
Exhibit B	Legal Description of Arcada Property
Exhibit C	Approved Plans
Exhibit D	Project Schedule
Exhibit E	Project Budget
Exhibit F	Disclosure Affidavit

**EXHIBIT A**  
**LEGAL DESCRIPTION OF ANNEX PROPERTY**

LOT 3 IN BLOCK 2 OF THE ORIGINAL TOWN (NOW CITY) OF ST. CHARLES, KANE COUNTY, ILLINOIS. EXCEPT THAT PART OF THE WESTERLY 9 FEET OF THE SOUTHERLY 12 FEET OF THE PROPERTY CONVEYED TO ARCADA PARTNERS, LLC AS DOCUMENT NO. 2001K034378 LEGALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 29.05 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 0.32 FEET TO THE CENTER LINE OF A 1 FOOT WIDE PARTY WALL; THENCE NORTHERLY ALONG SAID CENTER LINE 37.25 FEET TO THE POINT ON THE WESTERLY LINE OF SAID LOT 3 WHICH IS 34 FEET SOUTHERLY OF, AS MEASURED ALONG SAID WESTERLY LINE, THE NORTHWEST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID 1 FOOT WIDE PARTY WALL TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4 WHICH IS 0.28 FEET WESTERLY OF THE NORTHEAST CORNER THEREOF; THENCE EASTERLY ALONG SAID NORTHERLY LINE 50.57 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 3, A DISTANCE OF 100.30 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 50.295 FEET TO THE POINT OF BEGINNING; IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

Commonly known as: 107-109 Main Street, St. Charles, IL, 60174.

PIN: 09-27-389-010

**EXHIBIT B**  
**LEGAL DESCRIPTION OF ARCADA PROPERTY**

PARCEL 1:

THE WESTERLY 9 FEET OF THE SOUTHERLY 12 FEET OF THE PROPERTY DESCRIBED AS FOLLOWS: THAT PART OF LOTS 3 AND 4 IN BLOCK 2 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE EAST SIDE OF THE FOX RIVER, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 29.05 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 0.32 FOOT TO THE CENTER LINE OF A 1 FOOT WIDE PARTY WALL; THENCE NORTHERLY ALONG SAID CENTER LINE 37.25 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3 WHICH IS 34 FEET SOUTHERLY OF, AS MEASURED ALONG SAID WESTERLY LINE, THE NORTHWEST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID 1 FOOT WIDE PARTY WALL TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4 WHICH IS 0.28 FOOT WESTERLY OF THE NORTHEAST CORNER THEREOF; THENCE EASTERLY ALONG SAID NORTHERLY LINE 50.57 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 3, A DISTANCE OF 100.30 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 50.295 FEET TO THE POINT OF BEGINNING; IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR BENEFIT OF PARCEL 1 FOR MAINTENANCE AND REPAIR AND INGRESS AND EGRESS CREATED BY DEED RECORDED APRIL 17 2001 AS DOCUMENT [2001K034378](#) ON AND OVER THE FOLLOWING: THE SOUTHERLY 12 FEET OF THE FOLLOWING PROPERTY: THAT PART OF LOTS 3 AND 4 IN BLOCK 2 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE EAST SIDE OF THE FOX RIVER, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 29.05 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 0.32 FOOT TO THE CENTER LINE OF A 1 FOOT WIDE PARTY WALL; THENCE NORTHERLY ALONG SAID CENTER LINE 37.25 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3 WHICH IS 34 FEET SOUTHERLY OF, AS MEASURED ALONG SAID WESTERLY LINE, THE NORTHWEST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID 1 FOOT WIDE PARTY WALL TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4 WHICH IS 0.28 FOOT WESTERLY OF THE NORTHEAST CORNER THEREOF; THENCE EASTERLY ALONG SAID NORTHERLY LINE 50.57 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 3, A DISTANCE OF 100.30 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 50.295 FEET TO THE POINT OF BEGINNING; (EXCEPT PART LYING IN PARCEL ONE DESCRIBED ABOVE) IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PARCEL 3:

ALL OF LOTS 5 AND 6 IN BLOCK 2 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE EAST SIDE OF THE FOX RIVER, AND THAT PART OF LOTS 3 AND 4 IN SAID BLOCK 2, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 29.05 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 0.32 FEET TO THE CENTER LINE OF A ONE FOOT WIDE PARTY WALL; THENCE NORTHERLY ALONG SAID CENTER LINE 37.25 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3 WHICH IS 34 FEET SOUTHERLY OF, AS MEASURED ALONG SAID WESTERLY LINE, THE NORTHWEST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID ONE FOOT WIDE PARTY WALL TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4 WHICH IS 0.28 FEET WESTERLY OF THE NORTHEAST CORNER THEREOF; THENCE WESTERLY ALONG SAID NORTHERLY LINE 50.05 FEET TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 4, A DISTANCE OF 100.30 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 50.295 FEET TO THE POINT OF BEGINNING; IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

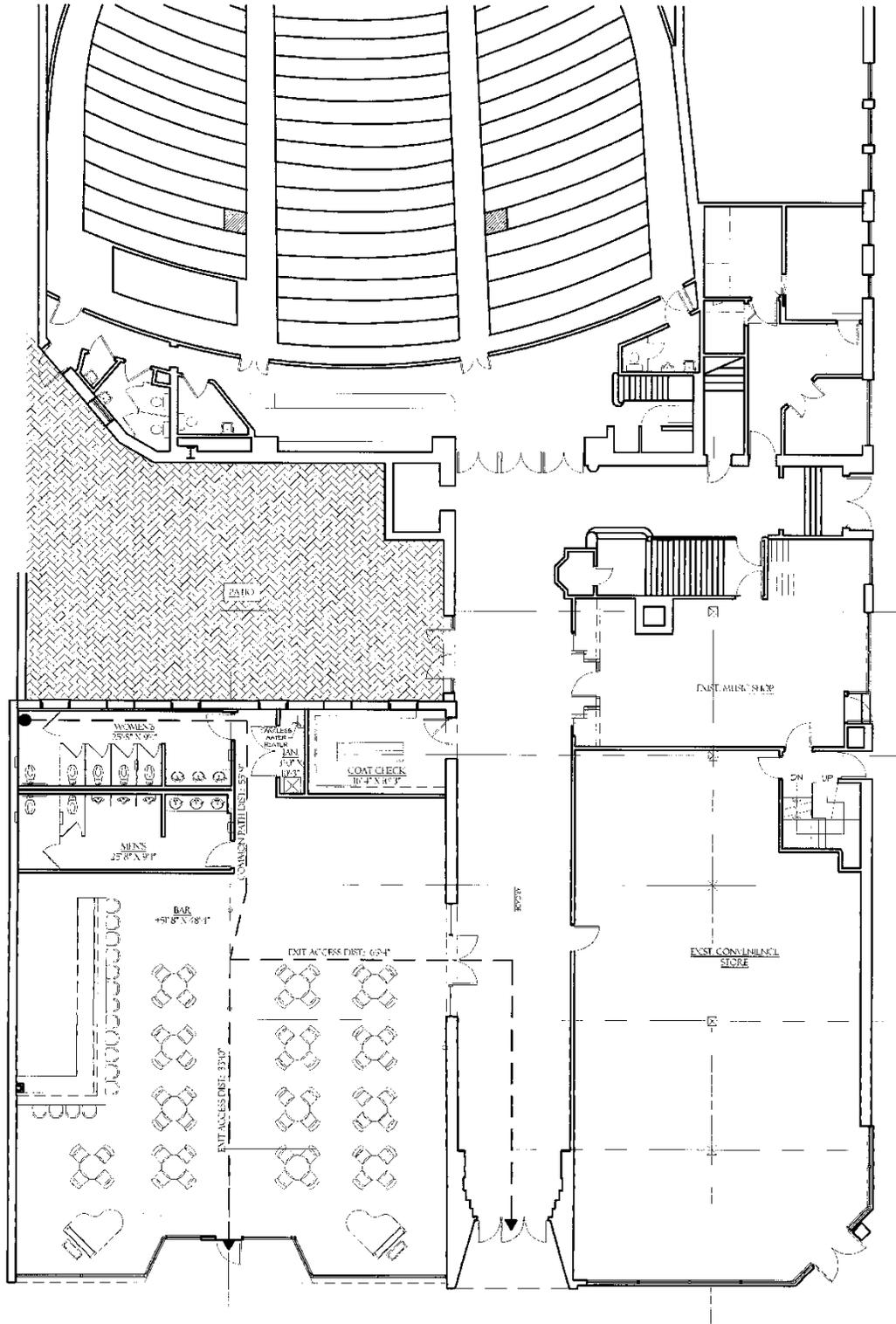
PARCEL 4:

EASEMENT FOR INGRESS AND EGRESS FOR BENEFIT OF PARCELS ONE AND THREE CREATED BY AGREEMENT RECORDED MAY 2, 1924 AS DOCUMENT [236236](#) AND BY AGREEMENT RECORDED JUNE 20 1925 DOCUMENT [256715](#) MADE BY JOE MELSON TO LESTER J. NORRIS FOR THE BENEFIT OF PARCELS ONE AND THREE OVER THE WEST 10 FEET OF THE SOUTH 94.5 FEET OF LOT 7 IN BLOCK 2 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PIN 09-27-389-011

Address 101 E Main St,  
St. Charles, IL 60174

**EXHIBIT C**  
**PLANS**



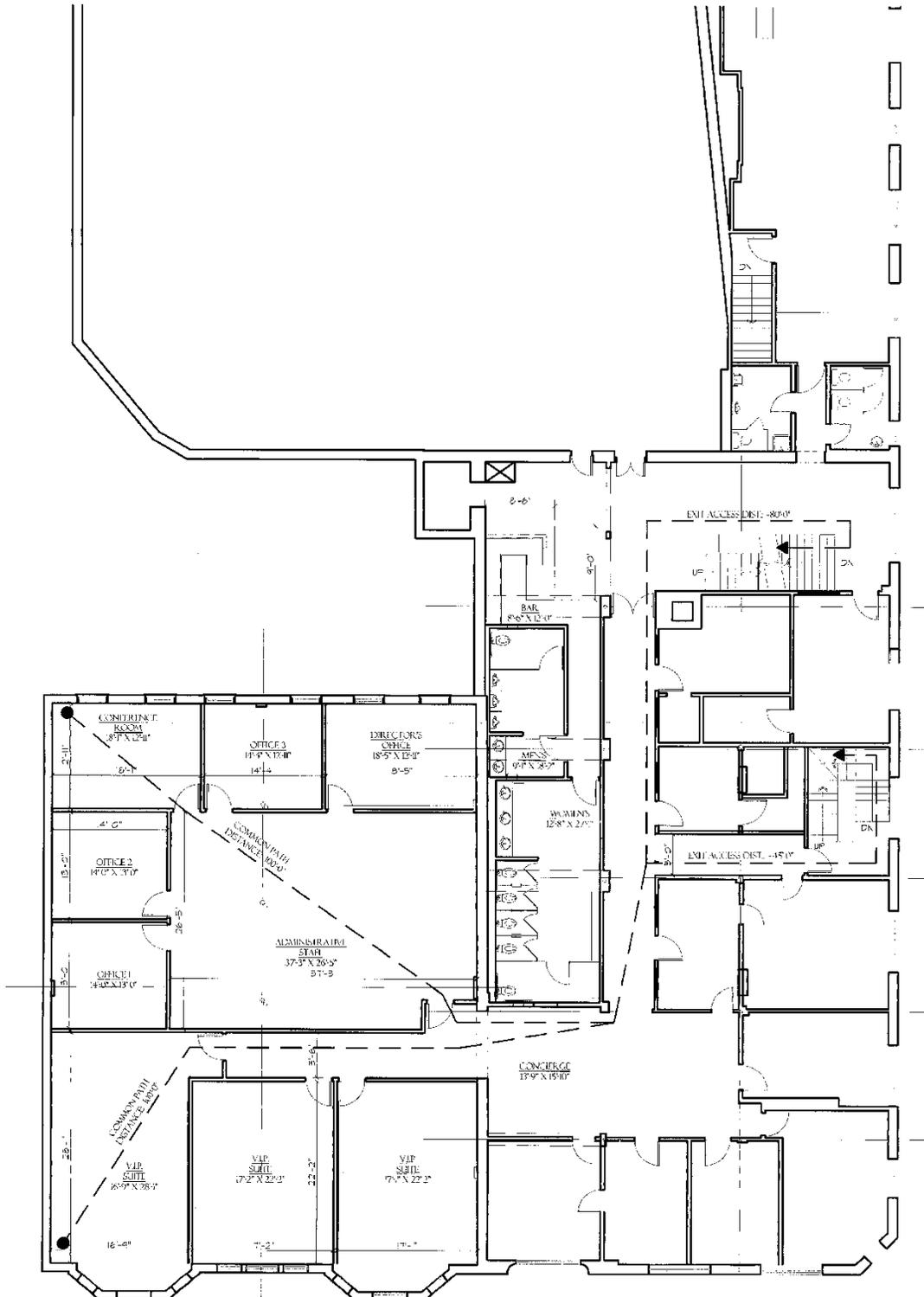
**GEORGE'S & ARCADE  
PRELIMINARY 1st FLOOR**

SCALE: 3/32" = 1'-0"

LOCATION: 107 W. MAIN STREET  
ST. CHARLES, IL 60174  
PLAN # 1  
PROJECT # 15026



**BÂTIR**  
2210 E. FIVE MILE ROAD, SUITE 100  
BATAIR ARCHITECTURE, LLC  
1121 E. MARKET SUITE 200, ST. CHARLES, IL 60174  
PHONE: 630-513-5100 FAX: 630-512-5919  
WWW.BATAIRARCHIT.COM



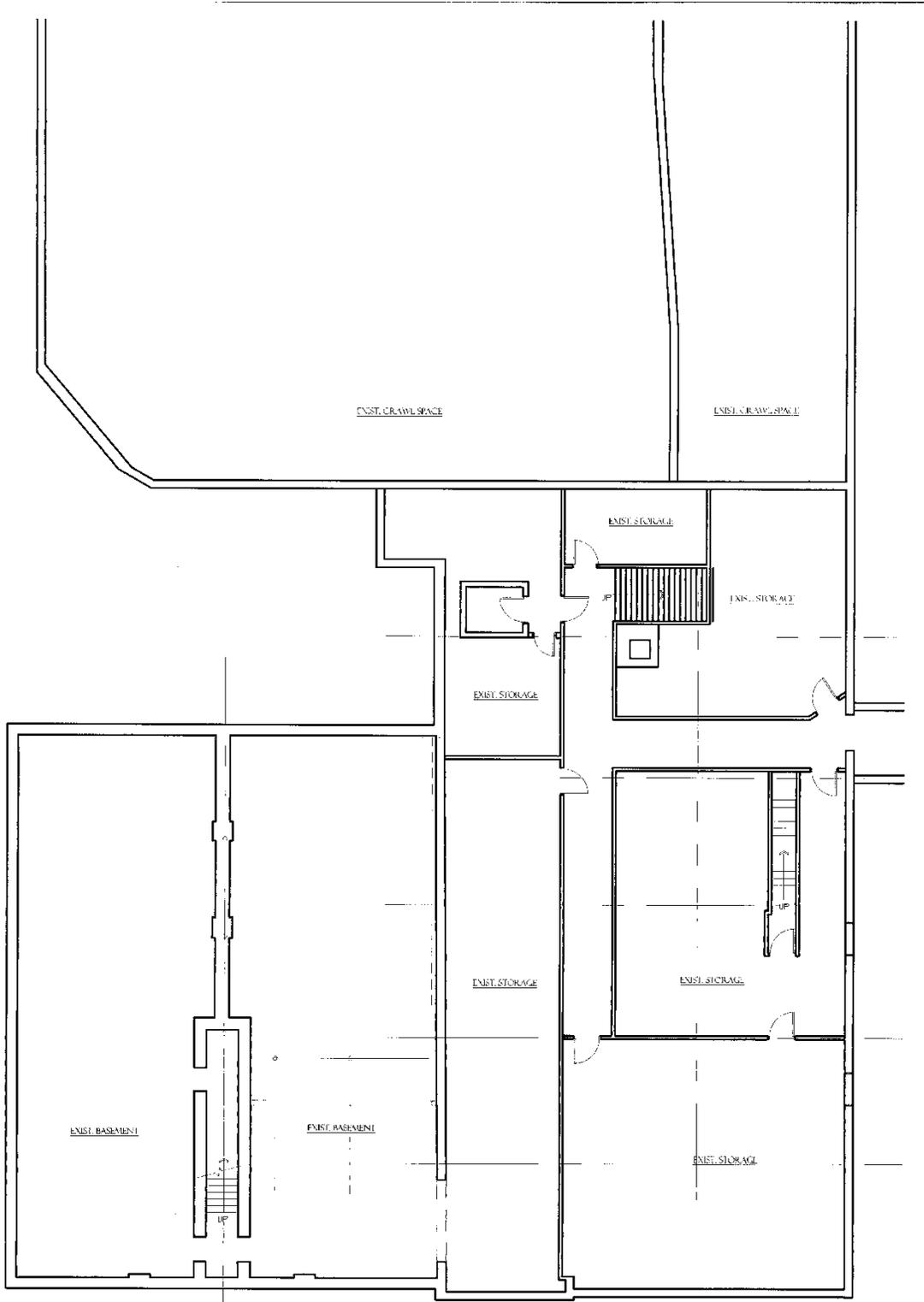
**GEORGE'S & ARCADE  
PRELIMINARY 2nd FLOOR**

SCALE: 3/32" = 1'-0"

LOCATION: 101-04 E MAIN STREET  
57 CHARLES, IL 60174  
PLAN # 2  
PROJECT# 1026



**BÂTIR**  
ARCHITECTURE LTD.  
 1111 E. MAIN ST. SUITE 220, ST. CHARLES, IL 60174  
 PHONE: 630-513-1109 FAX: 630-513-6916  
 WWW.BATRARCH.COM



**GEORGE'S & ARCADE**  
**PRELIMINARY BASEMENT**

SCALE: 3/32" = 1'-0"

LOCATION: 07-04 E. MAIN STREET  
 ST. CHARLES, IL 60174  
 PLAN # 0  
 PROJ: 0614-11026



**BÂTIR**  
 HEAD QUARTERS  
 BÂTIR ARCHITECTURE, LLC  
 3121 E. MAIN STREET, STE. 200, ST. CHARLES, IL 60174  
 PHONE: 630-513-5109 FAX: 630-513-5919  
 WWW.BATIRARCHIT.COM

**EXHIBIT D**  
**PROJECT SCHEDULE**

**Georges Annex to Arcada - Schedule**

Sep 6, 2019  
2

<b>Name</b>	<b>Begin date</b>	<b>End date</b>
Closing Date	11/30/19	11/30/19
Final Architecture & Permit Phase	8/15/19	11/30/19
Existing MEP Adjustments (Arcada)	8/15/19	11/15/19
Site Prep	10/23/19	10/30/19
Utility Work	10/23/19	11/15/19
Surface Improvements	11/11/19	11/30/19
Georges Improvement & Stabilization	11/30/19	2/14/20

**EXHIBIT E**  
**PROJECT BUDGET**

George's Annex to Arcada Budget  
October 21, 2019

<u>Description of Work</u>	<u>Budget Cost</u>
Electric service Arcada and George's	\$ 392,000
HAVC for Arcada Theater	\$ 207,000
Fire Protection for Arcada	\$ 168,000
Storm Sewer	\$ 60,000
George's Patio & Arcada Alley Pavers	\$ 40,000
George's Interior Improvements	<u>\$ 700,000</u>
Total	\$1,567,000

**EXHIBIT F**  
**DISCLOSURE AFFIDAVIT**

State of Illinois            ) ss  
County of Kane            )

THE DEVELOPER MUST SIGN THIS AFFIDAVIT.

I, \_\_\_\_\_, reside in \_\_\_\_\_, being first duly sworn and having personal knowledge of the below facts, swear to the following:

That I am over the age of eighteen and serve as the \_\_\_\_\_ of Manager of STC ARCADA, LLC (“Developer”).

That the Property in question has a common street address referred to as: \_\_\_\_\_, and with a Property Index Number(s) of \_\_\_\_\_ (hereinafter “Property”).

That I understand that pursuant to 50 ILCS 105/3.1, prior to execution of the Redevelopment Agreement between the Developer and the City, state law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the City disclosing the identity of every owner and beneficiary who will obtain any interest, real or personal, in the Redevelopment Property, and every shareholder who will be entitled to receive more than 7.5% of the total distributable income of any corporation having any interest, real or personal, in the Redevelopment Property after this transaction is consummated.

As the owner, authorized trustee, corporate official or management agent, I declare under oath that (choose one):

- (a) The owners or beneficiaries of the trust are \_\_\_\_\_; or
- (b) The members with more than 7-1/2% interest are \_\_\_\_\_; or
- © The limited liability company is publicly traded and there is no readily known individual having greater than a 7-1/2% interest in the limited liability company.

This instrument is made to induce the City to enter into the Redevelopment Agreement and in accordance with 50 ILCS 105/3.1.

Affiant: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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