

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR 325 S. MADISON STREET**

THIS AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 2025, by and between the CITY OF ROCKFORD, ILLINOIS, an Illinois municipal corporation (the “City”), and Oliver Emerson Development LLC, an Illinois limited liability company, and/or its assigns (the “Developer”) for the redevelopment of 325 S. Madison Street.

PREAMBLES

WHEREAS, the City and Developer (the “Parties”) entered into a certain Development Agreement dated and signed _____, 2024 (Ordinance _____); and

WHEREAS, by agreement of the Parties, that Development Agreement is hereby null and void this Agreement shall supersede and replace all prior agreements and understandings; and

WHEREAS, in the Redevelopment Project Area (as defined below), the City has identified a need for the location and redevelopment of commercial and residential property in the City; and

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 spread of blight, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements with third parties for the purpose of achieving these purposes.

WHEREAS, the City has the authority under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the “Act”), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.

WHEREAS, in accordance with the requirements of the TIF Act, on **April 7, 2025**, the Corporate Authorities adopted Ordinance No. **2025-047-O**, which approved a redevelopment plan and project, entitled the Madison and Oak Tax Increment Financing Redevelopment Plan and Program (the “**Redevelopment Plan**”), for the Madison and Oak Project Area (the “**Redevelopment Area**”); and

WHEREAS, also in accordance with the requirements of the TIF Act, on **April 7, 2025**, the Corporate Authorities adopted Ordinances No. **2025-048-O** and No. **2025-049-O** which designated the Redevelopment Area as a “redevelopment project area,” as that term is defined under the TIF Act, and approved tax increment financing for the purpose of implementing the Redevelopment Plan for the Redevelopment Area (Ordinance No. **2025-047-O**, Ordinance No. **2025-048-O** and No. **2025-049-O** collectively referred to as the “**TIF Ordinances**”); and

WHEREAS, the Developer is under contract with the City to purchase the property for Fifty Five Thousand Dollars (\$55,000), which said real estate is located within the intended Redevelopment Project Area, and Developer proposes to redevelop the property, renovating the existing building located on the property and converting the property to market-rate apartments (the “Project”), all as more fully described on **Exhibit A** attached hereto and incorporated herein. Said real estate is located

at 325 S. Madison Street (PIN: 11-23-361-004) and legally described on **Exhibit B**, attached hereto and incorporated herein (the “Subject Property”); and

WHEREAS, the proposal of the Developer is to do the following in connection with the Project: (i) undertake and pay for the costs of all plans and specifications, professional fees and apply for and receive all required plan review approvals and permits; and (ii) undertake and complete the Project in compliance with the approved plans and permits and City codes; and

WHEREAS, upon substantial completion, the Project will represent an investment on the part of the Developer of approximately \$ 11,554,985; and

WHEREAS, the Project is consistent with the Redevelopment Plan and is located within the Redevelopment Project Area; and

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

WHEREAS, in order to induce the Developer to undertake the Project, the Corporate Authorities have determined that it is in the best interests of the City and the health, safety, morals, and welfare of the residents of the City, on the terms and subject to the conditions set forth in this Agreement, to reimburse the Developer for eligible Redevelopment Project Costs in an amount not to exceed the TIF eligible approved expenses incurred by the Developer; and

WHEREAS, the Corporate Authorities have determined that the obligations of the City for the benefit of the Developer described in the immediately preceding recital and the completion of the Project by the Developer pursuant to this Agreement are in the best interests of the City and the health, safety, morals, and welfare of its residents and taxpayers and will be in furtherance of the Redevelopment Plan, thereby providing for economic development, enhancing the tax base of the City and other taxing districts, and adding to the welfare and prosperity of the City and its inhabitants.

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

Section 1. Incorporation of Recitals.

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

Section 2. Development of the Project.

(a) The Developer has an opportunity to revitalize the area by renovating and repurposing a 150-year-old building that has remained vacant for many years. The redevelopment of the building will bring much needed residential space to the downtown Rockford area. The interior/exterior rehabilitation and renovation of the existing building to complete the Project shall represent an estimated Developer investment of \$ 11,554,985.

(b) Prior to commencing construction, the Developer shall apply to the City for all

necessary building permits for the improvements to be made by the Developer by submitting all plans and specifications required pursuant to the City Code of Ordinances (“City Code”). The Developer shall be responsible for all building permit fees. The City shall review the building permit application as provided in the City Code. The plans and specifications and all other required submissions shall also comply with all applicable federal, state, county, municipal or administrative laws, ordinances, rules, regulations, codes and orders relating in any way to the development of the Project (collectively, the “Legal Requirements”).

(c) The proposed Project is currently permitted and in compliance with the City zoning ordinance and its land use regulations, . Developer shall follow the standard application process for such special use permit. In the event such regulations are amended in the future wherein the current use, setbacks and other features of the Project are no longer permitted, such features shall be considered “lawful non-conforming” and allowed to continue as provided for by the City Zoning Ordinance.

(d) Except Forgivable Loan described herein, the development of the Subject Property shall be completed at the sole cost and expense of the Developer and shall, unless otherwise agreed in advance by the parties in writing, conform to the approved plans and specifications. Subject to the terms and conditions of this Agreement, the City shall provide the Developer the principal sum of Two Million Seven Hundred Thousand Dollars (\$2,700,000) (“Forgivable Loan”), with no interest accruing thereon, from the City of Rockford Redevelopment Fund.

(e) Project Completion. The Project shall start no later than July 1, 2026 and be substantially completed on or before twenty-four (24) months following the closing of the capital stack of the Project, subject to reasonable Force Majeure delays. Such Project Completion date shall be subject to an automatic extension of up to nine months upon request to the City from Developer;

(f) In recognition of the contribution of Tax Increment to the Project, the Developer shall accept the property tax assessment for the Subject Property without protest for any year in which reimbursement is due and paid and during the life of the Madison and Oak Tax Increment Financing District until the Final Levy Date thereof.

(g) In recognition of the contribution of Forgivable Loan and Tax Increment to the Project, Developer agrees that the property shall not be used for:

- (i) Adult uses, including but not limited to an adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called “sexual toys”) or providing adult type entertainment or activities (including, without limitation, any displays of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts;
- (ii) Tattoo shops;
- (iii) A massage parlor or any establishment purveying similar services;
- (iv) Gaming machine establishments, including any bar or restaurant seeking video gaming terminals ancillary to its liquor license;
- (v) Tobacco stores;
- (vi) Second Hand store, excluding national or regional brands (such as ReTool, Play It Again Sports, Plato’s Closet, Gamestop, etc.);
- (vii) Cash for Gold store;

- (viii) Payday Loan store; and
- (ix) Title Loan store.

(h) It is expressly understood between the City and the Developer that the Developer may utilize federal or state historic tax credits to finance the Project. The City will have no liability with respect to the Developer's use or compliance with the aforementioned programs, or funding gaps associated with not securing said funds, and sole risk belongs to the Developer.

(i) Prevailing Wage: The Agreement calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* ("the Act"). Pursuant to the Act, contractors and subcontractors shall pay laborers, workers, and mechanics performing services on public works projects no less than the "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed.

(j) Certified Payroll: Pursuant to the Act, any contractor and any subcontractor who participates in the public works shall file with the State of Illinois certified payroll for those calendar months during which work on the public works project occurs. Certified payrolls shall be made available to the City upon reasonable request to monitor for compliance with the Act.

(k) Conditions Subsequent: Notwithstanding anything herein to the contrary, Developer's obligations hereunder to undertake and complete the Project are subject to the following conditions subsequent:

- (i) Developer assembling and closing the capital stack necessary to complete the Project;
- (ii) Developer's acquisition of the 325 S. Madison Street property from the City;

Section 3. Forgivable Loan Details

(a) Subject to all terms and conditions of this Agreement, the City agrees to disburse the Forgivable Loan to Developer for Redevelopment Project Costs in three (3) equal disbursements as set forth in **Exhibit C** (the "Eligible Redevelopment Project Cost Schedule") which are approved by the City pursuant to Section 3(b). The aggregate Forgivable Loan funds pursuant to this Section 3 shall in no event exceed Two Million Seven Hundred Thousand Dollars (\$2,700,000), which amount shall be paid subject to the terms as set forth in Section 3(b).

(b) The City shall distribute to Developer Forgivable Loan funds in an amount not to exceed Two Million Seven Hundred Thousand Dollars (\$2,700,000) for eligible Redevelopment Project Costs identified in **Exhibit C** and in accordance with the following terms:

1. Upon closing of the Project's capital stack, Developer shall tender to the City

documents to establish full financing for the Project, receipts to date, a draft settlement statement, purchase agreements or executed proposals, or other reasonable proof of eligible Project Costs for acquisition and pre-construction costs related to the Project. Such eligible Project Costs may include, without limitation, the purchase price and related closing costs for the Property, architectural fees and costs, and other up-front soft-costs. Within thirty (30) days of receipt of the proof of eligible Project Costs and documentation establishing full financing to complete the Project, which are acceptable to the City in the City's commercially reasonable judgment, , City shall disburse to Developer from the Forgivable Loan funds an amount of such costs up to the maximum amount of one-third (1/3) of the Forgivable Loan amount (i.e., \$900,000). The Developer will be eligible for one-third (1/3) of the remaining portion of the Forgivable Loan funds (i.e., \$900,000) upon approval of a rough inspection by the City Building Code Official. The Developer will be eligible for the remaining one third (1/3) of the Forgivable Loan funds (i.e., \$900,000) (for a total Forgivable Loan amount of \$2,700,000) upon substantial completion of the Project, which shall be no later than twenty-four (24) months after the closing of the capital stack for the Project or such later date as extended per provision earlier herein. The City shall disburse the funds to the Developer within thirty (30) days of each milestone approved by the City.

2. The City shall forgive all amounts due on the Forgivable Loan in accordance with the Promissory Note ("the Note"). The City shall forgive the Forgivable Loan in ten (10) equal annual installments (i.e. \$270,000 each, if the full Forgivable Loan was disbursed) with the first installment to be forgiven on the one (1) year anniversary of the disbursement of the final one-third (1/3) Forgivable Loan for the Project, and each subsequent installment to occur on the yearly anniversary of such date ("Forgiveness Period"). Forgiveness shall be conditioned upon 75% residential occupancy of the Subject Property in the prior year, except for the first year. Upon documentation from Developer demonstrating at least 75% residential occupancy of Subject Property for the prior year (except for the first year) the City shall forgive the Forgivable Loan at the rate outlined above.

Annual loan forgiveness shall also be conditioned on all property taxes being current on the Subject Property. Developer shall submit evidence acceptable to the City that property taxes for the Subject Property are not delinquent and that there are no amounts due and owing to be eligible for annual loan forgiveness.

3. Security. The Forgivable Loan shall be secured by the Note and Mortgage in the form attached hereto as **Exhibit D and E** to this Agreement. The Note provides for the terms of payment of the Forgivable Loan.

4. City's obligations herein are subject to Developer's satisfaction of all conditions precedent set forth in Section 6.

Section 4. City's TIF Reimbursement Payments to Developer.

(a) As long as no event described in Section 20 of this Agreement shall have occurred and be continuing, the City shall reimburse the Developer for the Redevelopment Project Costs incurred by the Developer set forth in **Exhibit C**, which are approved by the City pursuant to Section 4(c). The City agrees to provide the Developer with one hundred percent (100%) of the Increment generated by only the Project, which will commence annually on the year after closing on the Subject Property and for the remaining term of the Madison and Oak TIF, ending on 2048.

(b) Subject to the terms and conditions of this Agreement, the TIF funding provided by the City, as described herein, shall be disbursed to Developer upon Developer's satisfaction of all conditions precedent in Section 6, including but not limited to submittal of proof of Redevelopment Project Costs under the TIF Act. These Redevelopment Project Costs shall include those expenses described on **Exhibit C** and shall include, but not be limited to, land acquisition, demolition, site preparation, rehabilitation, reconstruction or repair or remodeling of existing public or private buildings, landscaping, parking lot construction, utility relocation, architectural and engineering costs, thirty percent (30%) of the interest, based on a commercially reasonable amortization schedule, on a loan secured to pay for the construction of the Project and legal fees. Developer shall provide documentation that the property taxes for the Project have been paid in full and are current. Developer shall submit to the City a written request for reimbursement of the TIF increment along with the documentation of the property tax payment by October 1st of each year.

(c) In connection with the payments set forth in Section 4(b), the Developer shall provide such evidence as the City shall reasonably request to establish that the Developer has incurred the costs for the work identified in **Exhibit C**. Such evidence shall include but not be limited to bills, paid receipts, contracts, invoices, lien waivers or other similar evidence. All bills and receipts shall contain the date of service, type of service, location of service, amount paid, name/address/telephone number of the service provider and other information as necessary to establish the identity of the provider, type of service and amount invoiced / paid. Developer shall further submit a release of claims and waiver from the service providers.

(d) For purposes of this Agreement, "Redevelopment Project Costs" shall mean and include all costs defined as "redevelopment project costs" in Section 11-74.4-3(q) of the TIF Act which are eligible for reimbursement under the TIF Act and this Agreement.

(e) Notwithstanding anything to the contrary contained herein, Developer shall have the right to designate a different entity to whom payments hereunder shall be made, in whole or part. Developer's initial designated entity is Oliver Emerson Development LLC.

(f) **THE CITY'S OBLIGATION TO PAY THE DEVELOPER THE INCREMENT UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL TAXES DEPOSITED IN THE SPECIAL TAX ALLOCATION FUND OF THE CITY CREATED WITH RESPECT TO THE PROJECT AS DEFINED IN THE RECITALS ABOVE, (THE "STAF") AND SHALL NOT BE A GENERAL OBLIGATION OF THE CITY OR SECURED BY THE FULL FAITH AND CREDIT OF THE CITY.** As used in this Agreement, "Incremental Taxes" shall mean the amount in the STAF equal to the amount of ad valorem taxes, if any, paid in respect of the project in the Redevelopment Project Area and improvements therein which is attributable to the increase in the equalized assessed value of the

Redevelopment Project Area from the Project and its improvements over the initial equalized assessed value of the Project in the Redevelopment Project Area, as calculated in accordance with the TIF Act.

Section 5. **Parking.** Developer shall have exclusive access of the parking lot, which is more fully described in the attached **Exhibit F**. The Developer shall provide a detailed landscaping and parking lot plan subject to City review and approval. Developer shall bear all costs associated with the routine maintenance of the parking lot including, but not limited to, snow removal, lighting and landscaping including irrigation, seal coating, resurfacing and repainting.

Section 6. **Conditions Precedent to City's Obligations.** The City's obligations to disburse any funds under this Agreement (including loan funds and reimbursement for Redevelopment Project Costs) are contingent upon Developer's satisfaction of each of the conditions precedent set forth below. City's waiver of any condition precedent prior to any disbursement shall not constitute waiver of any condition precedent required for subsequent disbursements.

- (a) Execution of the Mortgage and Promissory Note in form and content satisfactory to the City, including a guaranty from Oliver Emerson Development, LLC;
- (b) Articles of Organization and Operating Agreement;
- (c) Illinois Secretary of State Certificate of Good Standing or current printout from Secretary of State database reflecting that Developer is in good standing;
- (d) Resolution by members of Developer duly authorizing the Developer to enter into and execute this Agreement;
- (e) An opinion of Developer's counsel, in the form and substance satisfactory to the City and its counsel, affirming that (a) Developer is duly organized and validly existing under the laws of the State of Illinois with the power and authority to own, develop and lease the Property, as applicable, (b) the execution, delivery and performance of this Agreement and the other Loan Documents constitute a valid and binding obligation of Developer, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, moratorium or similar laws affecting creditors' rights and to equitable principles, (c) to the best of counsel's knowledge, which may be based solely on a certificate of Developer and such counsel's actual knowledge, the execution, delivery and performance of the Developer agreements do not breach or result in a default under any judgment, order or agreement applicable to Developer, and (d) to the best of counsel's actual knowledge, there is no litigation or proceeding pending or threatened against Developer;
- (f) [Intentionally omitted];
- (g) An opinion of Oliver Emerson's counsel in the form and substance satisfactory to the City and its counsel, affirming that (a) to the best of counsel's knowledge, which may be based solely on a certificate of Oliver Emerson and such counsel's actual knowledge, the execution, delivery and performance of this Agreement does not breach or result in a default under any judgment, order or agreement applicable to Oliver Emerson and (b)

to the best of counsel's actual knowledge there is no litigation or proceeding pending or threatened against Oliver Emerson;

- (h) Execution and delivery by Developer and other parties, as applicable, of, and full compliance with, all of the Loan Documents, and any other documents referred to herein, in form and content satisfactory to the City;
- (i) The absence of any legal proceedings (including foreclosure or bankruptcy proceedings) regarding the Subject Property;
- (j) Evidence satisfactory to the City that all insurance coverages are provided in accordance with the provisions of this Agreement;
- (k) Evidence that all representations and warranties of Developer are true and correct in all respects as of the date of the making of the disbursement and that no default or event of default shall be in existence on the date of making the disbursement;
- (l) Evidence that there shall have been no material adverse change in the financial or business condition or operations of Developer from the date of this Agreement;
- (m) Full performance of all of Developer's obligations under this Agreement and the Loan Documents due on or before the date of disbursement;
- (n) [Intentionally omitted];
- (o) Presentation of evidence of payment satisfaction, release, and release from all contractors or service providers that performed work for which Developer is requesting reimbursement in a form satisfactory to the City;
- (p) Developer providing the City with reasonable evidence of sufficient financing for the Project.
- (q) Such other documents as reasonably required by the City to evidence the transactions provided for herein.
- (r) Property taxes are paid in full.

Section 7. Insurance.

Developer shall obtain and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance, comprehensive coverage insurance and other insurance coverage as may be required by the City. All insurance policies shall name the City as an additional insured or certificate holder. All insurance required hereunder shall be with a company or companies licensed to conduct business in the State of Illinois.

Section 8. Term.

Unless earlier terminated pursuant to Section 20 hereof, the term of this Agreement shall commence on the date of execution and end upon the satisfaction of the parties' obligations under this Agreement. The parties agree that the covenant prohibiting the protest of assessed valuation of the property set forth in Section 2(f) above, shall survive the agreement and shall bind the Developer's heirs, successors, assigns and legatees.

Section 9. No Liability of City to Others for Developer's Expenses.

The City shall have no obligations to pay costs of the Project or to make any payments to any person other than the Developer, nor shall the City be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the development of the Project.

Section 10. No Discrimination.

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

Section 11. Waiver.

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

Section 12. Assignment.

This Agreement may not be transferred or assigned by the Developer without the prior written consent of the City. Any such consideration or consent to a transfer or assignment shall be at the sole discretion of the City. No such assignment shall be deemed to release the Developer of its obligation to the City unless the City specifically consents to such release, which it is under no obligation to do.

Section 13. Severability.

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

Section 14. Notices.

All notices, demands, requests, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the fifth (5th) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To the Developer:

Oliver Emerson Sr
Oliver Emerson Development LLC
2205 S. Perryville Road
Rockford, IL 61108

To the City:

City of Rockford
Attention: Community and Economic
Development Director
425 E. State Street
Rockford, IL 61104

With a copy to:

Oliver Emerson Jr
2205 S. Perryville Road
Rockford, IL 61108

With a copy to:

City of Rockford
Legal Director
425 E. State Street
Rockford, IL 61104

Section 15. Successors and Assigns.

The terms, conditions and covenants set forth in this Agreement shall extend to, be binding upon, and inure to the benefit of the respective successors and permitted assigns of the City and the Developer and shall run with the land. Any person or entity now or hereafter owning legal title to all or any portion of the Subject Property, including the Developer, shall be bound to this Agreement only during the period such person or entity is the legal titleholder of the Subject Property or a portion thereof, however, that all such legal title holders shall remain liable after their ownership interest in the Subject Property ceases as to those liabilities and obligations which accrued during their period of ownership but remain unsatisfied or unperformed.

Section 16. No Joint Venture, Agency or Partnership Created.

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

Section 17. Memorandum.

Either party, at its sole expense, may record this Agreement in the Office of the Recorder of Deeds, Winnebago County, Illinois.

Section 18. Default. The occurrence of any of the following acts, events, or conditions shall constitute a default under this Agreement, and following the notice and right to cure as expressly provided in this Agreement, shall, if uncured as provided below, constitute an event of default ("Event of Default") hereunder and under the other Loan Documents:

- (a) failure to obtain a final Certificate of Occupancy within 24 months of closing of the Project's capital stack or such later date provided for by extension as set forth earlier herein;
- (b) failure to secure full financing for the Project and complete the financial closing for the Project within 12 months from the execution of the agreement;
- (b) any breach of or failure to comply with any term or condition of this Agreement or the Loan Documents;
- (c) any transfer or assignment in violation of Section 12 hereof;
- (d) any filing by Developer, or on behalf of Developer, of a petition in bankruptcy or for an arrangement, reorganization, or any other form of debtor relief, or the filing of such petition against Developer;
- (e) the entry of a decree or order for the appointment of a trustee, receiver or liquidator for Developer, or Developer's property which is not discharged within thirty (30) days;
- (f) Developer commencing any proceeding for dissolution or liquidation, or, if not discharged within thirty (30) days, the commencement of such proceeding against Developer;
- (g) Developer making an assignment of all, or substantially all, of its assets for the benefit of its creditors, or admitting in writing its inability to pay its debts generally as they become due;
- (h) Developer failing to satisfy and pay any final judgment, order or decree for the payment of money rendered against it, or the filing against Developer of an attachment, execution or other judicial seizure of any portion of Developer's assets; or
- (i) Developer making any written representation to the City which is materially false or misleading when made.

Developer agrees to give the City prompt written notice of any Event of Default.

The City's declaration of an Event of Default hereunder shall be made by notice to Developer pursuant to Section 14 of this Agreement and shall be effective as provided therein.

Section 19. Notice and Cure. The City shall give Developer written notice of any alleged default, in accordance with the provisions of this Agreement, and Developer shall have the following periods to cure such default:

(a) as to any default which materially, adversely and exigently affects or impairs any of the City's rights under the Loan Documents, there shall be no cure period;

(b) as to any act or occurrence constituting a default under Sections 18(c), 18(d), or 18(i), except as provided in Section 19(a) above, the cure period shall be ten (10) days; provided, however, that if such cure cannot be completed within such ten (10) day period through the exercise of diligence, Developer shall commence the required cure within such ten (10) day period and thereafter continue the cure with diligence and complete the cure within sixty (60) days following Developer's receipt of the notice; and

(c) as to any act or occurrence constituting a default under other paragraphs of Section 18 where no specific cure period is set forth, and except as provided in Section 19(a) or (b) above, the cure period shall be thirty (30) days; provided, however, that if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, Developer shall commence the required cure within such thirty (30) day period and thereafter continue the cure with diligence and complete the cure within sixty (60) days following Developer's receipt of the notice.

Section 20. Rights Upon Default.

(a) If any Event of Default shall occur, the City may declare all amounts owed under the Loan Documents immediately due and payable, including all disbursed Forgivable Loan funds, without further demand or notice, and/or exercise its rights and remedies under the Loan Documents and applicable law.

(b) The City's failure to enforce any default shall not constitute a waiver of the default or any subsequent default.

(c) In addition to any other rights or remedies, the City may institute legal action to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance. In the event the City shall institute legal action against the Developer because of a default of this Agreement, the City shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

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

(e) If the City is in default of this Agreement, the Developer shall provide the City with a written statement setting forth the default. The Developer may not exercise any remedies against the City in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the City is diligently

proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Developer in asserting its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach. In addition to any other rights or remedies, the Developer may institute legal action to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance. In the event the Developer shall institute legal action against the City because of a default of this Agreement, the Developer shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

Section 21. Books and Records. The City, or its authorized representative, shall have reasonable access upon ten (10) business days' prior written notice, to the books and records of Developer related to the Project, to conduct a confirmatory examination of such books and records. Said examination shall be at the City's expense unless Developer's statements are found to contain significant errors, in which case the confirmatory examination will be at Developer's expense.

Section 22. Amendment.

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

Section 23. Signs.

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

Section 24. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 25. Time is of the Essence.

Time is of the essence of this Agreement; provided, however, a party shall not be deemed in material breach of this Agreement with respect to any obligations of this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("Force Majeure"). If one of the foregoing events shall occur or either party shall claim that such an event

shall have occurred, the party to whom such claim is made shall investigate the same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

Section 26. Choice of Law/Venue.

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

Section 27. Cooperation and Further Assurances.

The parties 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 as may be reasonably required to carry out the terms, provisions and the intent of this Agreement. The City agrees to cooperate with the Developer in the Developer's attempts to obtain all necessary governmental approvals for the Project. The City shall further promptly process and consider reasonable requests of the Developer for relief or variances from any City ordinances, applicable building permits, or other permits necessary for the construction of the Project.

Section 28. Repealer.

To the extent that any ordinance, resolution, rule, order or provision of the 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.

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

[SIGNATURE PAGE FOLLOWS]

Oliver Emerson Development, LLC

By: _____
Oliver Emerson Jr, Member

CITY OF ROCKFORD, ILLINOIS
A Municipal Corporation

By: _____
Mayor

ATTEST:

City Legal Director

DRAFT

EXHIBIT A

The structure as it currently exists is part of a National Historic District and has been consistently promoted to represent an era of manufacturing in Rockford that represents its formative years in industry. While the facility has undergone many uses and transformations, the plan to celebrate the original history of the Watch Factory has been pursued as the most comprehensive in achieving our goals for the redevelopment. The Watch Factory was designed by the renowned architect firm Burnham and Root. The project as proposed is consistent with Illinois Historic Preservation Memo of Agreement approved by City council in April of 2014 when the Sports Factory project was advancing. The Project is an adaptive reuse of the existing 27,064 square foot, 3 story structure with a basement consisting of 24 residential units.

DRAFT

EXHIBIT B

Legal Description of Property

DRAFT

EXHIBIT C

Redevelopment Project Cost Schedule

DRAFT