

TO: Martin Callahan, Chairman of the Community Development Committee

FROM: Laura Newman, City Administrator

DATE: January 7, 2021

RE: Proposed Comedy Club at 18 E. Wilson and Use of TIF Funds to Incentivize Same

Introduction

On Tuesday, December 15th, Michael Knuth, a resident of Aurora, and current owner of the successful Even Flow Music and Spirits in Geneva, Illinois and Elizabeth Valaitis of Algonquin, Illinois presented the Committee of the Whole with their plans to open a comedy club in the former bank building at 18 E. Wilson St.. Because of the significant costs associated with converting this building from a bank into a comedy club, they are requesting financial support from the City in form of a Tax Increment Financing District grant and a low interest loan.

Comedy Club Specifics

According to The Comedy Vault's Business Plan (attached), it will be a hip comedy club offering live comedy and entertainment in a bright, lively, and inviting atmosphere that will compliment the burgeoning growth happening in Batavia's downtown. The Comedy Vault will focus on bringing amazing comedians and entertainers to the stage as well as serving up fun cocktails, wine and local craft beers. They plan to serve food catered in by their sister location, Even Flow as well as other local restaurants.

Although intended as primarily an entertainment venue, the owners have expressed their willingness to provide event space for public and private organizations.

Mr. Knuth and Ms. Valaitis will make a presentation during Tuesday night's JCOW meeting to better explain their business plan as well as their innovative interior design ideas to transform a very traditional bank interior into a lounge-like atmosphere, while still paying homage to the building's former use.

Preliminary floor plans for The Comedy Vault depict seating for approximately 100 patrons on the main floor. The former bank's large vault will serve as the bar area. Talent would enter from the rear of the building near which is located a room that will serve as the "green room" for entertainers to relax before and after their sets. Adjacent to this area would be space for food preparation and storage.

Provided Mr. Knuth and Ms. Valaitis receive the financial assistance they are requesting from the City, construction can begin as soon as building plans have been reviewed and approved and a permit is issued, with a possible Q1 2021 opening.

TIF Financial Incentive Terms and Conditions

The total project cost in establishing The Comedy Club at 18 East Wilson Street is estimated to be \$250,000 (approximately \$200,000 for build-out and \$50,000 to purchase equipment, furniture,

dishware, etc.). As previously stated, the subject space will need to be completely renovated to accommodate this new use. If it were solely the responsibility of the building owner to make the required build-out improvements for the comedy club, rent rates would be prohibitive. Consequently, these costs are being assigned to the tenant and, at \$250,000, “but for” the city’s financial assistance, make this business venture otherwise economically unviable.

As such, Mr. Knuth and Ms. Valaitis are requesting: 1. a TIF grant in the amount of \$25,000; and 2. a low interest loan in the amount of \$75,000. The term and interest on this loan will be four years and 2%, respectively. The owners have submitted and staff has reviewed the required financial information (i.e., Business Plan and pro forma for The Comedy Vault and Profit and Loss Statements covering 2018 and 2019 for Even Flow, and copies of their 1040 federal tax returns for 2018 and 2019). For their part, the business owners will undertake and complete the building improvements as planned and necessary to facilitate The Comedy Club, and will open for business the subject comedy club at 18 E. Wilson Street.

Staff Recommendation

Having reviewed the information concerning the proposed Comedy Vault comedy club, information presented on the existing Even Flow in Geneva, and having considered the potential positive impact the proposed entertainment venue will have on the immediate area and on downtown Batavia’s business community generally, staff recommends that COW recommend that City Council approves ORD 21-08 authorizing execution a TIF Redevelopment Agreement with Comedy Vault, LLC (D/B/A The comedy Vault) relating to the building improvements at 18 East Wilson, River Street.

Cc: Mayor Schielke
Department Heads
Michael Knuth
Elizabeth Valitis
Michael Marconi

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 21-08**

**AN ORDINANCE AUTHORIZING EXECUTION OF
A TIF REDEVELOPMENT AGREEMENT WITH
COMEDY VAULT, LLC (D/B/A THE COMEDY VAULT) RELATING TO THE
BUILDING IMPROVEMENTS AT 18 EAST WILSON. RIVER STREET**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
THIS 19th DAY OF JANUARY, 2021**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This 19th day of January, 2021

Prepared by:

City of Batavia
100 N. Island Ave.
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 21-08**

**AN ORDINANCE AUTHORIZING EXECUTION OF
A TIF REDEVELOPMENT AGREEMENT WITH
COMEDY VAULT, LLC (D/B/A/ THE COMEDY VAULT) RELATING TO THE BUILDING
IMPROVEMENTS AT 18 EAST WILSON STREET**

WHEREAS, the City of Batavia is authorized by Illinois Law to create tax increment financing redevelopment areas within its boundaries to aid in the redevelopment of certain areas of the City; and

WHEREAS, in 1989, the City of Batavia enacted those ordinances necessary to create such an area in a portion of the Batavia downtown, commonly known as TIF District 1; and

WHEREAS, Comedy Vault, LLC (d/b/a The Comedy Vault) is considering a new Comedy Club enterprise in downtown Batavia, specifically at 18 East Wilson Street, and within TIF District 1 and;

WHEREAS, Comedy Vault, LLC (d/b/a The Comedy Vault) has proposed improvements to the property in cooperation with the property owner, , which would include permanent building renovations; and

WHEREAS, the City Council has determined that the improvements would not be possible without the assistance of TIF funds to aid in the project, such assistance to be comprised of both a grant of funds and the extension of a loan; and

WHEREAS, a certain Agreement entitled "Comedy Vault, LLC (d/b/a The Comedy Vault), 18 East Wilson Street Redevelopment Agreement," a copy of which is attached hereto as Exhibit 1, should be entered into to provide the opportunity for said redevelopment, and

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are authorized to execute the document entitled "Comedy Vault (d/b/a The Comedy Vault), 18 East Wilson Street Redevelopment Agreement," which is attached hereto as Exhibit 1.

SECTION 2: That this Ordinance shall be in full force and effect from and after its presentation, passage, approval, and publication in pamphlet form as provided by law.

CITY OF BATAVIA, ILLINOIS ORDINANCE 21-08

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 19th day of January, 2021.

APPROVED, by me as Mayor of said City of Batavia, Illinois, this 19th day of January, 2021.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Baerren				
2	Callahan					Wolff				
3	Chanzit					Meitzler				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	McFadden					Miller				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office:		Mayor and 14 aldermen								

ATTEST:

Ellen Posledni, City Clerk

Comedy Vault, LLC (d/b/a-The Comedy Vault), 18 East Wilson Street
REDEVELOPMENT AGREEMENT

This Agreement made this _____ day of _____, 2021, by and between the City of Batavia, an Illinois municipal corporation, ("City"), and Comedy Vault, LLC (d/b/a The Comedy Vault) ("Developer").

R E C I T A L S

A. The City has the authority to promote the health, safety and welfare of the City and its inhabitants, to prevent the spread of blight and to encourage private development in order to enhance the local tax base and create employment, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes.

B. Developer desires to establish a new comedy club at 18 East Wilson Street and on the property legally described on Exhibit A attached hereto and made a part hereof (the "Property"). The Property lies within the Downtown Tax Increment Finance District #1 redevelopment area (the "Redevelopment Project Area"). Developer has submitted a list of building improvement activities associated with the planned expansion and with cost estimates totaling an amount in excess of \$220,000. City and Developer have agreed that not all such activities are subject to this instant Agreement and that, for the purposes of this Agreement, only those that are shall be known as the "18 E. Wilson Street Project" or "Project".

C. Construction and equipment purchase and installation activities that are subject to this Agreement shall be known as the "Project Improvements" and are deemed essential for the business to successfully expand its operations and economic viability. These improvements are eligible for contribution by the City as the "Eligible Project Improvements" and consist of:

- Demolition
- Construction/Frame out
- Electrical
- Plumbing
- Drywall, Paint and Finishing
- Food Prep and Storage Areas
- Storage Area
- Bathrooms
- Office Buildout
- Exterior Signage

The above Project Improvements, eligible for contribution by the City, shall be known as the "Eligible Project Costs" and are estimated to carry a total cost in excess of \$140,000, including a 20% contingency. These estimates may not ultimately reflect the actual costs of these Project Improvements, but in no event shall the City contribute more than \$100,000 in total cumulative costs, or actual costs, whichever is lower. The parties acknowledge that the Developer would not move forward with the Project, to the detriment of the City and its goals

for downtown redevelopment, nor would the Project occur without the contributions toward the Project Costs made by the City under this Agreement.

C. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, Sections 11-74.4-1 et seq., of Ch. 24, 111. Rev. Stat., as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.

D. To stimulate and induce the acquisition and redevelopment of the Redevelopment Project Area, and pursuant to the Act, the City adopted the following ordinances ("TIF Ordinances" or "Ordinances"):

Ordinance No.89-80, being an Ordinance Approving the Riverfront Tax Increment Redevelopment Plan and Riverfront Redevelopment Projects;

Ordinance No 89-81 , being an Ordinance Designating Riverfront Tax Increment Project Area;

Ordinance No.89-82 , being an Ordinance Adopting Tax Increment Financing for Downtown Redevelopment Project," all properly adopted by the City Council of the City of Batavia on December 4, 1989 ; and

E. For the purpose of contributing a portion of the Project Costs, the City Council contemplates a grant of \$25,000, and a loan to the Developer in an amount not to exceed \$75,000.

FOR AND IN CONSIDERATION of the mutual covenants described above and the agreements contained below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I

INCORPORATION OF RECITALS

The recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section I, and this Agreement shall be construed in accordance therewith.

II

CERTAIN DEVELOPER'S COVENANTS AND REPRESENTATIONS

Developer represents and covenants to the City as follows:

2.01 Developer shall be governed by, adhere to and obey any and all applicable federal, state and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the Project as may be in effect from time to time, including the ordinances referred in the recitals to this agreement.

2.02 Developer shall proceed diligently to carry out the construction of the Project as required pursuant to this Agreement.

2.03 (i) Developer is a limited liability company organized and validly existing and in good standing under the laws of the State of Illinois; (ii) Developer has the right and power and is authorized to enter into, execute, deliver and perform this Agreement and to execute and deliver the 18 E. Wilson/Comedy Vault, LLC Redevelopment Note (“Redevelopment Note”), attached as Exhibit B hereto, incorporated herein and more fully described hereinafter; (iii) the execution, delivery and performance by Developer of this Agreement shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or breach of any provision contained in Developer's corporation’s bylaws, or any instrument or document to which either Developer is now a party or by which it is bound; (v) Developer is now solvent and able to pay its debts as they mature; (vi) there are no actions at law or similar proceedings which are pending or threatened against Developer which might result in any material and adverse change to the Developer's financial condition, or materially affect the Developer's assets as of the date of this Agreement; (vii) the Developer has, or will have prior to receiving any of the payments set forth in this Agreement, all government permits, certificates, consents (including, without limitation, appropriate environmental clearances and approvals) and franchise necessary to continue to conduct its business and to lease and operate its business within the Property as now leased by it; and (viii) no default has been declared with respect to any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which the Developer is a party or by which it is bound;

2.04 Developer shall not enter into any transaction during the development of the Project which materially and adversely affects Developer's ability to meet its obligations under the Redevelopment Note (“Adverse Event”). In the event the City reasonably believes such an Adverse Event has occurred and so notifies Developer in writing detailing the Adverse Event, the matter may be cured by developer by either satisfying the Adverse Event or the posting of a letter of credit or bond in such amount as the City shall reasonably determine, which amount shall not to exceed the amount remaining due on the Note.

2.06 All of the information provided regarding the Project, the Property and Developer is true, correct and complete to the best of Developer's knowledge.

III

CITY'S COVENANTS

3.01 The City represents and warrants that it has authority under Illinois Statutes to execute and deliver and perform the terms and obligations of this Agreement.

IV

CONSTRUCTION OF THE PROJECT

4.01 Developer's Covenant to Redevelop. No later than January 29, 2021, Developer shall submit to the City plans and application for a building permit to undertake the Project.

4.02 Time for Completion of 18 East Wilson Project. Developer, acting under the authority of the City, shall complete construction of the Project Improvements, no later than 180 days after the date of City approval of the plans, and construction must be completed prior to occupancy of that space. In the event Developer has not completed all the build out and secured a certificate of occupancy permit within 180 days, subject to force majeure, the City reserves the right to propose revisions on any of the terms of this Agreement or to terminate the agreement. In the event that the City declares the Agreement terminated, all sums paid out by the City shall be repaid to the City by the Developer within 30 days of the notice of termination.

4.03 Prevailing Wage Act. Developer is responsible for determining whether any portion of the Project Improvements must be completed in compliance with the Prevailing Wage Act 820 ILCS 130/.01 et seq. In the event that the Prevailing Wage Act applies, Developer shall insure that every contract and subcontract, purchase order and invoice (in the event there is no written contract) must contain a written requirement that all work done under such contract, subcontract, purchase order or invoice must be done in compliance with the Prevailing Wage Act, including the obligation to pay not less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work on the Project and in compliance with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12, to the extent they are applicable, including without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. In the event that the Prevailing Wage Act does apply, any failure to timely submit certified monthly payroll reports shall be cause for the withholding of payments otherwise due under this Agreement until compliance with the reporting requirements is achieved. Compliance with the Prevailing Wage Act, to the extent that it applies, shall be the Developer's obligation, and the Developer shall indemnify and hold harmless the City from and against liabilities that might attach for non-compliance. It is acknowledged and agreed that the provisions of this Section 4.03 apply only to the construction of the Project Improvements, and not to the maintenance, repair and or replacement of same following initial construction.

4.04 Compliance with All Other Laws. The Project shall be constructed in accordance with the requirements of this Agreement and shall be in conformity with all applicable laws, ordinances and regulations.

4.05 Continued Operations. After completion of the Project, the Developer shall open the establishment as a comedy club open to the public and seating approximately one (100) hundred guests. In the event that the Developer does not conduct business operations continuously for a period commencing from the opening and ending on December 31, 2024, the Developer shall repay to the City all money paid by the City to the Developer pursuant to the TIF Grant and the loan contemplated by this Agreement. For purposes of this section "Business Operations" shall mean that the comedy club is open for performers at least twelve (12) nights per month. In the event that Business Operations cannot be maintained because of prohibited operations imposed by State or local officials, the Business Operations requirements shall be suspended for the duration of the period when operations are prohibited. However, if Business Operations do

not resume thirty (30) days after being permitted to do so the repayment shall be made within thirty days.

V

COMPLETION

5.01. Issuance of Certificate of Occupancy. After completion of the construction of the Project Improvements in accordance with this Agreement, the issuance by the City of a Certificate of Occupancy for the project space shall be a conclusive determination of satisfaction with respect to the obligations of Developer and its successors and assigns to construct the Project Improvements or cause them to be constructed. The City shall use its best efforts to respond to Developer's written request for a Certificate of Occupancy within 10 days after the City Building Commissioner's receipt thereof, either with the issuance of a Certificate of Occupancy, or with a written statement indicating in adequate detail how Developer has failed to complete the construction in conformity with this Agreement, or is otherwise in default, and what measures or acts, will be necessary, in the opinion of the City Building Commissioner for Developer to take or perform in order to obtain the certificate. If the City requires additional measures or acts of Developer to assure compliance, Developer shall resubmit a written request for a Certificate of Occupancy upon compliance with the City's response.

VI

UTILITY CONNECTIONS AND PERMIT FEES

6.01 Utility Connections. The Developer shall request and the City shall not unduly deny or delay permission to connect City utilities as may be required to complete the Project.

6.02 Permit Fees. City agrees that Developer shall be obligated to pay, in connection with the construction of the Development, only those building, permit, engineering, right of way and inspection fees that are assessed on a uniform basis throughout the city and are of general applicability to other property within the city.

VII

USE OF MUTIPLE CONTRACTORS

8.01 Notwithstanding anything to the contrary herein contained, Developer has the right to enter into separate contracts for the Project Improvements.

VIII

DISBURSEMENT AND OBLIGATIONS

8.01 Source of Funds for Payment of City's Contribution to Project Costs On December 4, 1989, the City adopted City of Batavia Ordinance 89-82, entitled "Ordinance

Adopting Tax Increment Financing for Downtown Redevelopment Project (the "Real Estate Tax Increment Ordinance"). The Real Estate Tax Increment ordinance provides, in part, that ad valorem taxes, if any, arising from the levies upon taxable real property in the Redevelopment Project Area by taxing districts and tax rates determined in the manner provided in Sections 11-74.4-9 (c) of the Act, for each year after the effective date of the Real Estate Tax Increment Ordinance until the obligations issued in respect to the Redevelopment Project Area have been paid, or the termination of the TIF district by operation of law, whichever occurs earliest, which are attributable to the increase in the current equalized assessed valuation of each lot, block, tract or parcel of real property in the Redevelopment Project Area as certified by the Kane County Clerk, all as provided in Sections 11-74.4-8 and 11-74.4-9 of the Act (hereinafter the "Real Estate Tax Increment") shall be allocated to and when collected shall be paid to the County Collector who shall deposit the Real Estate Tax Increment in a special fund entitled "Batavia TIF District No. 1" (the "Special Fund") for the purpose of paying redevelopment project costs and obligations incurred by the City. As of the date of this Agreement, the City has available for deposit in the Special Fund, the full amount of \$100,000.00.

The parties agree that tax increment allocation financing implemented in accordance with the terms and provisions of the Act shall be the only source of City funding for all of the costs of Project Improvements, provided, however, Developer shall pay the amount by which the actual Project Development Project Costs exceeds the total ceiling of \$100,000.00.

8.02 Payments to Developer. The City shall pay a sum not to exceed \$100,000.00, or 100% of the Eligible Project Costs, whichever is less, that sum to be known as known as the Total City Contribution. \$25,000 shall be in the form of a grant, and Developer shall have no obligation to repay this grant, except in accord with the provisions of Section 4.02. The balance of the Total City Contribution shall be made in the form of a loan in the amount not to exceed \$75,000 with a term of 48 months and an annual percentage rate of 2%, for which Developer shall execute the Note attached to this Agreement as Exhibit B at the occasion upon which the City's payments to Developer under this Agreement exceeds \$25,000. The entire total city contribution may only be utilized to pay Eligible Project Costs. Eligible Project Costs shall include any increased costs in any of the Eligible Project Improvements, provided that in no event shall the City be liable for more than \$100,000.00 total cumulative costs.

Developer shall have the right to prepay the unpaid balance owing to the City in advance, in whole or in part, in Developer's sole discretion and without penalty.

In the event Developer fails to make any monthly payment within five (5) days of its due date (the first of the month), and said failure to make the payment continues for a period of thirty (30) days after the provision of written notice of such failure by the City to Developer, then, in that event, the City will have the right to declare this Agreement in default. In the event of such default, the entire existing balance of the loan together with dollars paid pursuant to the TIF Grant shall be immediately due and payable in full.

8.03 Process for City Payment to Developer Payments shall be made as follows:

- Upon presentation by Developer of a written Request for Payment accompanied by an invoice for completed work on Project Improvements, and the City (at its option) inspects or otherwise verifies that the work has been done in accord with this Agreement and state and local codes and ordinances, and that partial or final mechanic lien waivers sufficient to cover the City's portion of the invoiced work have been properly issued, City shall, within 30 days of receipt of such invoice, pay to Developer the amount contained in the invoice.
- Said payments shall be made to Developer until City has paid \$100,000.00 or 100% of the eligible Project costs, whichever is less.
- The City shall pay its share of Eligible Project Improvement Costs, even if individual segments of the Project Improvements exceed individual component estimates, but total City payments shall be capped at \$100,000.00 or 100% of the Project Costs, whichever is less.
- Requests for reimbursement shall be made in minimum increments of \$10,000.00.

8.04 Dissolution of Special Fund. Notwithstanding anything contained in this Agreement or in the Redevelopment Note to the contrary, the City shall pledge and maintain the Special Fund for the purposes stated herein until the first of the following to occur: (i) the failure of Developer to substantially perform the Project Improvements on or before the time specified in Section 4.02; (ii) payment by the City of its Total Project Costs; or (iii) expiration or dissolution of the TIF District.

8.05 Modifications to Project Improvements. Developer may, with the prior written approval of City, reduce excess costs by modifying the Project Improvements, provided that there is full compliance with the Approved Plans.

8.06 Opinions. The Developer shall deliver to City an opinion from the Developer's counsel, in a form acceptable to the City's attorney, providing that the Redevelopment Note is a valid and binding commitment of the Developer, fully enforceable in accordance with its terms.

IX

DEVELOPER RESPONSIBILITY FOR PAYMENT

Beyond City's payment to Developer of the City's contribution, Developer agrees to pay all costs for the Project as may be required for completion. The Developer represents that it has the equity and other financing necessary to complete the Project Improvements.

X

PERFORMANCE

10.01 Time of the Essence. It is understood and agreed by City and Developer that time is of the essence of this Agreement, and that all parties shall make every reasonable effort to expedite the subject matters hereof. It is further understood and agreed that the successful consummation of this Agreement shall require the continued cooperation of City and Developer. Whenever the consent or approval of City is required in order for Developer to accomplish the purposes and intent hereof, such consent shall not be unreasonably withheld or unduly delayed. If such consent or approval is denied, such denial shall be in writing, and shall specify the reason or reasons for such denial.

10.02 Delay. For the purposes of any of the provisions of this Agreement, neither the City nor Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather condition such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornadoes or cyclones and other like event or condition beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge the respective obligations hereunder; nor shall either the City or Developer be considered in breach of, or default in its obligations under this Agreement in the event of a delay resulting from the conduct of any judicial, administrative or legislative proceeding or caused by litigation or proceedings challenging the authority or right of the City to act under the Redevelopment Plan, any of the ordinances, or perform under this Agreement. The City shall diligently contest any such proceedings and any appeals therefrom. The City may settle a contested proceeding at any point, so long as the settlement results in the City's ability to perform pursuant to this Agreement and so long as any such settlement does not impose additional obligations on Developer or increase its obligations under this Agreement, unless by agreement with the Developer. Provided, however, that the party seeking the benefit of the provisions of this Section 10.02 shall, within ten (10) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

10.03 No Waiver by Delay. Any delay by City or Developer in instituting or prosecuting any actions or proceedings or in otherwise exercising its rights shall not operate 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 the City and the Developer should still hope to otherwise resolve the problems created by the default involved). No waiver in fact made by the City with respect to any specific default by Developer should be considered or treated as a waiver of the rights of the City with respect to any other defaults by Developer or with respect to the particular default except to the extent specifically waived in writing. No waiver in fact made by the Developer with respect to any specific default by City should be considered or treated as a waiver of the rights of the Developer with respect to any other defaults by City or with respect to the particular default except to the extent specifically waived in writing.

10.04 Breach. Upon a breach of this Agreement, either of the parties in any court of competent jurisdiction, by any action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained or may be awarded damages for failure of performance or both. Before any failure of any party to this Agreement to perform its obligations hereunder shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within sixty (60) days of the receipt of such notice.

10.05 Inspection Rights. Any previously identified and agreed upon duly authorized representative of the City, at all reasonable times during normal business hours, shall have access at his/her sole risk to the Property for the purpose of confirming Developer's compliance with the Agreement.

XI

INDEMNITY

Developer hereby agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities claims, suits, actions, causes of action and expenses (including without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with (i) the failure of Developer to perform its obligations under this Agreement or (ii) the failure of Developer or any contractor to pay contractors, subcontractors, or materialmen in connection with the Project Improvements or (iii) material misrepresentations or omissions in this Agreement or any financing documents related thereto which are the result of information supplied or omitted by the Developer or by agents, employees, contractors, or persons acting under the control or at the request of the Developer, or (iv) the failure of Developer to cure any misrepresentations or omissions in this Agreement or any other agreement relating hereto.

XII

CITY'S RIGHT TO AUDIT DEVELOPER'S BOOKS AND RECORDS

Developer agrees that the City shall have the right and authority to review and audit, from time to time, Developer's such books and records as relate to the Project Improvements (including Developer's general contractor's sworn statements, general contracts, subcontracts purchase orders, waivers of lien, paid receipts and invoices) in order to confirm that the City's Funds are or have been expended for purposes of undertaking the Project Improvements. Developer further agrees to incorporate the City's right to audit books and records as described herein into all contracts entered into by Developer with respect to the Project Improvements.

XIII

RESERVED

XIV

RESTRICTIONS

14.01 Developer agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that Developer and its successors and assigns shall:

(a) install the improvements which constitute the Project by August 31, 2021 and

(b) during the term of this agreement or December 31, 2024, which ever shall first occur, devote the Property to, and only to, the uses specified herein and uses allowed with the applicable zoning.

XV

AMENDMENT

15.01 This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties by the adoption of an ordinance or resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

XVI

NO OTHER AGREEMENTS

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

XVII

CONSENT

17.01 Except as otherwise provided in this Agreement, whenever herein consent or approval of either party is required, such consent or approval shall not be unreasonably withheld.

XIIX

CONFLICT OF INTEREST: CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE

18.01 No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement; nor shall any member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. No member, official, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

XIX

EQUAL EMPLOYMENT OPPORTUNITY

19.01 Developer, for itself and its successors, assigns, contractors, subcontractors, tenants and lessees, agrees that until the Occupancy Certificate for the Project is issued

(A) Developer shall not knowingly discriminate against any employee or applicant for employment related directly to Project Improvements because of race, religion, color, sex, age, mental or physical disability, national origin or ancestry, sexual orientation, marital status, parental status, military discharge status or source of income, and

(B) Developer shall include the provisions of Section 19.01(A), in every contract, and shall require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provision will be binding upon each such contractor, or sub-contractor, tenant or subtenant as the case may be.

XX

MUTUAL ASSISTANCE

20.01 The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate to carry out the terms, provisions and intent of this agreement.

XXI

MISCELLANEOUS PROVISIONS

21.01 Remedies Cumulative. The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of such party unless specifically so provided herein.

21.02 Disclaimer. Nothing contained in this Agreement nor any act of the City, shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third-party beneficiary, or of joint venture, or of any association or relationship involving the City.

21.03 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be in writing and shall be sufficiently given on the date hand delivered or on the second day following the day on which the same shall have been mailed by registered or certified mail, postage and fees prepaid, return receipt requested addressed as follows:

If to city:	Laura Newman City of Batavia 100 North Island Avenue Batavia, IL 60510
With Copies to:	Mr. Kevin Drendel 111 Flinn Street Batavia, IL 60510
If to Developer:	Michael Knuth Comedy Vault, LLC (Comedy Vault) 18 E. Wilson St. Batavia, IL 60510

The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent.

21.04 Paragraph Headings. The paragraph headings and references are for the convenience of the parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

21.05 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.

21.07 Successors and Assignees. The terms and conditions of this Agreement shall constitute a covenant running with the land and be binding upon and inure to the benefit of the

parties hereto, their successors in interest, assignees, lessees, and upon any successor municipal authorities of the City and successor municipalities. Prior to the completion of the Project Improvements, and Certificate of Occupancy by City, as described in section V of this Agreement, Developer shall not assign its rights and obligations under this agreement to another party except with the express written consent of the City, which consent shall be given within 30 days of the written request of Developer, and shall not be unreasonably withheld and shall be based solely on the financial requirements of this Agreement for the completion of the Project Improvements. Except as otherwise expressly provided herein, upon the conveyance or assignment by Developer of its interest in the Property to any successor, assign, or nominee, Developer, as the case may be, shall be released from any and all further liability or responsibility under this Ordinance, and the City shall thereafter look only to the successor, assign, or nominee of Developer as the case may be, concerning the performance of such duties and obligations of Developer hereby undertaken.

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

21.09 Joint and Several Liability. Developer, its successors or assigns hereby agrees to be directly, unconditionally and primarily liable to the City for the performance of Developer's obligations under the Agreement.

XXII

TERM OF THIS AGREEMENT

22.01 This Agreement shall terminate, and the Developer's unaccrued obligations under this agreement shall cease upon the later of December 31, 2024, or upon the payment in full of any amount remaining due on the Note, provided however, this Agreement shall not terminate in any event until the obligations to make any payments on the Note or repayments required by this Agreement have not been fulfilled.

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 OF BATAVIA

BY: _____
Jeffery D. Schielke, Mayor

ATTEST: _____
Ellen Posledni, City Clerk

DEVELOPER:

Comedy Vault, LLC (Comedy Vault)

BY: _____
Michael Knuth, President

ATTEST: _____

Exhibit B

UNITED STATES OF AMERICA

STATE OF ILLINOIS

CITY OF BATAVIA

REDEVELOPMENT NOTE

(Comedy Vault, LLC Redevelopment Note)

Comedy Vault, LLC acknowledges itself indebted and for value received hereby promises to pay, pursuant to the terms of the "Redevelopment Agreement" described below, to the order of the City of Batavia (City) a principal sum not to exceed \$75,000.00 and computed hereinafter, together with interest thereon at an interest rate of 2% to be computed as described hereinafter, and payable as described herein. The principal sum of this note shall be equal to the sum of (a) all monies in excess of \$25,000.00 paid by the City to Developer towards Project Costs as described in the Redevelopment Agreement, pursuant to Requests for Payment approved by the City pursuant to Section 8.03 of the Redevelopment Agreement referred to below, plus (b) the interest which has accrued on the sums in (a), as calculated hereinafter, such principal sum representing the City's contribution to Developer to construct certain private improvements pursuant to Paragraph 2.02 of the Redevelopment Agreement.

Payments upon this note shall be made on a monthly basis following the final payment by City of the sums payable to Developer under the provisions of Paragraph 8.02 of the Redevelopment Agreement and the terms set forth below.

Beginning on September 30, 2021, Developer will commence payment of the balance of the actual payments and said payments will continue, together with simple interest at the rate of 2% per annum, on the first day of each successive month for the following 39 months (for a total of 40 payments), until such total actual payments plus interest, is paid in full. The amount of each monthly payment will consist of 1/40th of the balance of the actual cost of construction plus interest (as set forth above), the exact amount of which shall be determined by the City and provided to Developer prior to the required commencement of the payments.

Both principal of and interest on this Note are payable in lawful money of the United States of America.

This Note is entitled to the protection and security given by the Redevelopment Agreement. Reference is hereby made to the Redevelopment Agreement and to all ordinances supplemental thereto with respect to the nature and extent of the security for this Note, the rights, duties and obligations of the Developer, and the terms upon which the Note is issued and secured.

IN WITNESS WHEREOF, Comedy Vault, LLC has caused this Note to be executed in its name and on its behalf by its President, Michael Knuth:

Dated: _____

BY: _____
President, Comedy Vault, LLC

Attest: _____