

CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (the "Agreement") dated as of November __, 2016 is made by and between the CITY OF AURORA, an Illinois home rule municipal corporation (herein called "Lender"), having an address at 44 E. Downer Place, Aurora, IL 60505, and FOX VALLEY DEVELOPERS, LLC, an Illinois limited liability company (herein called "Borrower"), having an address at _____, Aurora, IL 60506.

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following terms shall have the respective meanings assigned to them.

1.1 Advance. The term "Advance" shall mean a disbursement by Lender of any of the proceeds of the Loan and/or the Borrower's Deposit or any other disbursement to or for the account of Borrower in accordance with any of the provisions of the Agreement or of any other Security Instrument.

1.2 Agreement. The term "Agreement" shall mean this Construction Loan Agreement as the same may be amended from time to time by a writing executed by Borrower and Lender.

1.3 Application for Advance. The term "Application for Advance" shall mean a written application on Lender's prescribed forms, certified by Borrower, Architect, and Contractor (and such other parties as Lender may require) addressed to Lender specifying by name, current address, and amount all parties to whom Borrower is obligated for labor, materials, or services supplied for the construction of the Improvements and all other expenses incident to the Loan, the Property, and the construction of the Improvements, whether or not specified in the Approved Budget, requesting an Advance for the payment of such items, accompanied by such schedules, affidavits, releases, waivers, statements, invoices, bills and other documents as Lender may reasonably request.

1.4 Approved Budget. The term "Approved Budget" shall mean a budget or cost itemization prepared by Borrower and which has been approved by Lender as of the date hereof, specifying the cost by item of (a) all labor, materials, and services necessary for the construction of the Improvements in accordance with the Plans and all Governmental Requirements, and (b) all other expenses anticipated by Borrower incident to the Loan, the Property, and the construction of Improvements.

1.5 Architect. The term "Architect" shall mean the architect selected by Borrower to be approved of by Lender in its reasonable discretion.

1.6 Assignment of Contracts. The term "Assignment of Contracts" shall mean the Assignment of Contract Documents pursuant to which Borrower will assign all of its rights, title, and interest in and to the Plans, the Construction Contract, and all other contracts and agreements between Borrower and any third parties pertaining to the construction of the Improvements.

1.7 Borrower's Deposit. The term "Borrower's Deposit" shall mean such cash sums as Lender may deem necessary, from time to time until the Loan is paid in full, in addition to the Loan, for the payment of the costs of labor, materials and services required for the construction of the Improvements, other costs and expenses specified in the Approved Budget, all costs and expenses required to be paid pursuant to the Security Instruments, including but not limited to interest, and other costs and expenses required to be paid in connection with the construction of the Improvements in accordance with the Plans, any Governmental Requirements, and the requirements of any lessee approved by Lender, if applicable, and any other development and financing costs.

1.8 Commencement Date. The term "Commencement Date" shall mean the date of the Initial Advance.

1.9 Completion Date. The term "Completion Date" shall mean the date of completion of the Improvements which shall not be later than _____, 202_.

1.10 Construction Contract. The term "Construction Contract" shall mean all construction contracts between Borrower and Contractor and/or any subcontractors for the construction of the Improvements.

1.11 Construction Loan. The term "Construction Loan" shall mean the non-revolving line of credit loan of up to One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) to finance Borrower's construction of the Improvements and ancillary costs related thereto, all as provided for in the Approved Budget.

1.12 Contractor. The term "Contractor" shall mean the contractor selected by Borrower and which has been approved of by Lender in its reasonable discretion.

1.13 Debtor Relief Laws. The term "Debtor Relief Laws" shall mean any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

1.14 Financial Statements. The term "Financial Statements" shall mean the balance sheets, profit and loss statements, reconciliation of capital and surplus, changes in financial condition, schedules of sources and applications of funds, and other financial information of Borrower and/or Contractor, heretofore furnished to Lender or required to be furnished to Lender under the terms of this Agreement or any of the other Security Instruments from time to time, which statements shall be prepared in

such form, scope and detail as shall be reasonably acceptable to Lender and shall be certified by such parties, and if required by Lender, with respect to financial statements that are not internally prepared by Borrower, certified by an independent certified public accountant selected by Borrower or Contractor.

1.15 Financing Statements. The term "Financing Statements" shall mean the form of filing instrument filed or intended to be filed under the Uniform Commercial Code of the State of Illinois or of any other state where Lender's counsel deems it appropriate to file Financing Statements in order to perfect Lender's security interest in any of the collateral for the Loan.

1.16 Governmental Authority. The term "Governmental Authority" shall mean the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other political subdivision, agency, or instrumentality exercising or claiming jurisdiction over Borrower or the Property or the Improvements.

1.17 Governmental Requirements. The term "Governmental Requirements" shall mean all laws, ordinances, rules, and regulations of any Governmental Authority applicable to Borrower or the Property.

1.18 Guarantor(s). The term "Guarantor" or "Guarantors" shall mean, individually and collectively, Jason Konrad, Russ Woerman, Michael Poulakidas and Stathis Poulakidas.

1.19 Guaranty. The term "Guaranty" shall mean, individually and collectively, (i) the Guaranty dated of even date herewith made by Guarantor in favor of Lender, and (ii) the Guaranty of Completion dated of even date herewith made by Guarantor in favor of Lender.

1.20 Improvements. The term "Improvements" shall mean the interior buildout of the Medical Tenant Space with the related on-site and off-site improvements, all in accordance with the Plans.

1.21 Lender's Consultant. The term "Lender's Consultant" shall mean such inspecting agent chosen by Lender in Lender's sole discretion.

1.22 Loan. The term "Loan" shall mean the Loan of up to One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) by Lender to Borrower as evidenced by the Note. The Loan shall include any involuntarily advanced funds in excess of the principal loan amount which Lender deems necessary to advance to preserve and to protect collateral covered by the Security Instruments and Lender's status as to the Property, Improvements and other collateral.

1.23 Medical Tenant Space. The term "Medical Tenant Space" shall mean the approximately _____ square foot tenant space located on the Property.

1.24 Note. The term "Note" shall mean the Non-Revolving Line of Credit Note from Borrower to Lender of even date herewith in the amount of One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) and evidencing the Loan.

1.25 Plans. The term "Plans" shall mean the final working drawings and specifications, together with any amendments or modifications thereto, for the construction of the Improvements, prepared by Architect, and reasonably approved in writing by Lender, Borrower, and any necessary Governmental Authority.

1.26 Property. The term "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein by reference, together with the Improvements.

1.27 Security Instruments. The term "Security Instruments" shall mean, collectively, this Agreement, the Note, Assignment of Beneficial Interest and the Guaranty, and such other instruments evidencing, securing, or pertaining to the Loan as shall, from time to time, be executed and delivered by the Borrower or any other party to Lender pursuant to this Agreement. The terms, provisions and conditions of the Security Instruments are incorporated herein by reference as fully and with the same force and effect as if specifically set forth herein at length.

1.28 Title Company. The term "Title Company" shall mean Chicago Title Insurance Company, whose address is 2000 W. Galena Blvd., Aurora, IL 60506.

ARTICLE 2 ADVANCES

2.1 Commitment of Lender. Subject to the provisions of this Agreement, Lender agrees to make advances to Borrower up to an amount not to exceed One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00), to be repaid by Borrower as set forth in the Note.

2.2 General Conditions Precedent. The following must be satisfied as conditions precedent to Lender's obligation to make any Advance at any time:

(a) All representations and warranties set forth in this Agreement, in each Application for Advance and in all other Security Instruments shall be true and complete on and as of the date of any such Advance, with the same effect as if made and repeated on that date.

(b) As of the date of any such Advance,

(1) The Borrower is in full compliance with all of the covenants, agreements, obligations and undertakings required to be performed by it

under this Agreement and under the other Security Instruments, unless compliance thereof shall have been waived in writing by Lender;

(2) No Event of Default as defined herein or in any other Security Instrument, and no event or condition which, with the giving of notice or the passage of time, or both, as prescribed herein or in such other Security Instrument, would constitute any such Event of Default has occurred and remains uncured to Lender's satisfaction;

(3) There shall have been no material adverse change in the business or financial condition or management of Borrower and the Property and Improvements shall not have suffered any significant damage by fire or other casualty that is not being repaired consistent with the terms of the Loan Documents and no condemnation or adverse zoning or usage change proceedings shall have been commenced or threatened, and no law, regulation, ordinance, moratorium, injunctive proceeding, restriction or similar matter shall have been enacted, adopted or threatened by any Governmental Authority if the result of such law, regulation, ordinance, moratorium, injunctive proceeding, restriction or like matter would have the effect, in Lender's reasonable judgment, of materially and adversely affecting the expected benefits to be gained by Borrower in connection with the Property or by Lender in connection with its assisting Borrower in financing the subject transaction for any reason, whether because of Borrower's being prohibited or delayed in completing the Improvements or otherwise;

(4) All statements contained in Borrower's Application for Advance are true and complete as of the date of the application and all other certificates, statements and data furnished to Lender by or on behalf of either Borrower or Contractor in connection with the transactions contemplated by this Agreement or any of the other Security Instruments are true and complete in all material respects, and there are no facts or events known to Borrower or Contractor, which, if disclosed to Lender, would make such statements, certificates or data untrue in any material respect;

(5) All documentation shall at all times be in form and content reasonably acceptable to Lender's counsel, and all legal matters, whether or not specifically referred to in this Agreement, shall be reasonably acceptable in all respects to such counsel and shall be supported by such proof, evidence, assurance and documentation relating to legal matters as Lender's counsel in its sole reasonable judgment shall deem necessary, customary or appropriate for the transactions contemplated by this Agreement;

(6) The Advance shall not cause the aggregate of all Advances to exceed One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00); and

(7) The Borrower is in compliance with the "Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois," dated November 12, 2019, by and between the Lender, the Borrower and the Guarantor, as amended.

2.3 Interest on the Loan. Interest on the Loan, at the rate specified in the Note, shall be computed on the unpaid principal balance which exists from time to time and shall be computed with respect to each Advance from the date of disbursement by Lender of such Advance.

2.4 Application for Advance. Advances for the disbursement of proceeds of the Loan shall be made by Lender not more frequently than once during each thirty (30) day period, upon compliance by Borrower with this Agreement after actual commencement of construction of the Improvements, for work actually done during the preceding period, except for such reimbursement of soft costs expended by Borrower prior to the commencement of construction and approved by Lender in writing, which amount shall be disbursed concurrently with the initial disbursement of the Loan. Borrower shall submit an Application for Advance to Lender requesting an Advance for the payment of costs of labor, materials, and services supplied for the construction of and incorporated into the Improvements or for the payment of other costs and expenses incident to the Loan, and specified in the Approved Budget. No Advance will be made for materials not incorporated or not to be incorporated into the Work. Each application for Advance shall be submitted by Borrower to Lender and to the Lender's Consultant in a reasonable time, but no less than ten (10) business days prior to the date on which an Advance is desired by Borrower. Upon receipt of the Application for Advance, Lender shall request an inspection of and require a favorable report on the Improvements by the Lender's Consultant prior to making any Advance. The Lender's Consultant shall certify to Lender that at the time an Application for Advance is made: (a) the Advance requested is in proportion to the work completed; (b) that all work has been performed in a good and workmanlike manner; (c) that construction of the Improvements is proceeding diligently and in accordance with the Plans; and (d) information as to the cost of completing the Improvements sufficient for Lender to conclude that there are sufficient funds remaining in the Borrower's Deposit or undisbursed by Lender under this Agreement to complete the construction of the Improvements together with interest and other costs and expenses required to be paid under the Note and this Agreement; provided, however, that if in the regular course of its business the Lender's Consultant shall not certify as to any of the matters referred to in subsections (a) through (d) aforesaid then, as a condition to disbursement, Lender must be satisfied as to such matters by other independent means acceptable to Lender in the exercise of its reasonable judgment.

2.5 Aggregate of Advances. Advances for payment of costs of construction of the Improvements shall not exceed the costs of labor, materials and services incorporated into the Improvements in a manner acceptable to Lender and, in addition, shall be subject to the provisions of Section 2.13 hereof. Any profit or overhead payable to Borrower shall be paid based upon the percentage of completion of the Improvements. In no event, however, shall the aggregate of all Advances plus (a) the balance of the costs required to complete the construction of the Improvements in accordance with the approved Plans, the payment of interest under the Note and the balance of all direct and indirect financing and development costs, and (b) adequate contingency reserves as reasonably determined by Lender, exceed the amount of the Loan.

2.6 Construction Escrow. All disbursements of the Loan shall be made through an escrow to be established at the office of the Title Company. Borrower covenants and agrees to prepare and execute any escrow agreements and other instruments requisite to the establishment of said escrow, all of which are subject to Lender's written approval. All costs associate with the Construction Escrow shall be the sole cost of the Borrower. The escrow agreement shall provide for payments to be made directly to the subcontractor or material supplier entitled thereto and shall further obligate the escrowee to provide Lender with a monthly statement or other evidence acceptable to Lender as to the amount then retained in the escrow and an itemization of disbursements.

2.7 Use of Advances. Borrower shall cause the disbursement of all Advances for payment of costs and expenses incurred for all development and construction of the Improvements as specified in the Approved Budget, and most recently requested on an Application for Advance, and for no other purpose.

2.8 The Borrower's Deposit. If Lender at any time determines that the amount of the unadvanced portion of the Loan will not be sufficient to pay fully for all costs required to be paid pursuant to the Security Instruments, all costs required to complete the construction of the Improvements in accordance with the approved Plans and for all financing (including interest) and development costs to be incurred by Borrower, whether such deficiency is attributable to changes in the work, of construction or in the Plans or to any other cause, Lender may make written demand on Borrower to make the Borrower's Deposit equal to the amount of the shortage determined by Lender, to be retained and disbursed by Lender subject to the provisions of this Agreement, without interest. Borrower shall then deposit the required funds with Lender within five (5) days after the date of Lender's written demand. No further Advances need be made by Lender until the Borrower's Deposit is made by Borrower. Borrower shall promptly notify Lender in writing if and when the cost of the construction of the Improvements exceeds, or appears likely to exceed, the amount of the unadvanced portion of the Loan and the unadvanced portion of the Borrower's Deposit. An amount equal to the Borrower's Deposit will be disbursed prior to the disbursement of proceeds of the Loan.

2.9 Direct Disbursement and Application by Lender. Lender shall have the right, but not the obligation, to disburse and apply the proceeds of any Advance to the satisfaction of any of Borrower's obligations relating to the Property, the Improvements or the Loan directly to Contractor, the Title Company, Lender or to any other person or firm to whom payment is due under this Agreement or any other Security Instrument or in connection with the Improvements. Any Advance by Lender for such purpose, except Borrower's Deposit, shall be part of the Loan and shall be secured by the Security Instruments. Borrower hereby authorizes Lender to hold, use, disburse, and apply the Loan and the Borrower's Deposit for payment of costs of construction of the Improvements, expenses incident to the Loan and the Property, and the payment or performance of any obligation of Borrower hereunder, including, without limitation, interest on the Loan, any Loan fees owing to Lender, legal fees of Lender's attorneys, and such other sums as may be owing from time to time by Borrower to Lender with respect to the Loan. Such payments may be made, at the option of Lender, by (a) debiting or charging Borrower's Loan account in the amount of such payments, or (b) advancing all or any part of the amount of such payments and then invoicing Borrower therefor. No further direction or authorization from Borrower shall be necessary to warrant such direct Advances and all such Advances shall satisfy pro tanto the obligations of Lender hereunder and shall be secured by the Security Instruments as fully as if made directly to Borrower.

2.10 Conditions to the First Advance. In addition to the general conditions set forth in Section 2.2, as a condition precedent to the first Advance hereunder Borrower must pay the fees, satisfy the conditions required hereby and deliver to Lender the documents, certificates and other items that are set forth below:

- (a) The Architect agreement fully executed by Borrower and Architect;
- (b) The Security Instruments duly executed and in recordable form by Borrower;
- (c) The Contractor agreement fully executed by Borrower and Contractor;
- (d) An Assignment of Contracts together with the consent of the Architect, Contractor, and any other such party to the assignment thereof;
- (e) The insurance policies or certificates of such insurance policies as specified herein;
- (f) Evidence that the Construction Escrow has been established for the purpose of disbursing Advances;
- (g) A list of the names, addresses and telephone numbers of all substantial subcontractors and materialmen involved in the construction of the Improvements, said list to be periodically updated during the course of

construction, together with true and correct copies of all executed contracts and subcontracts;

(h) The Financial Statements of Borrower and Guarantors as required by this Agreement, the Note and Guaranty;

(i) As to the Medical Tenant Space for which a disbursement from the Loan is being requested, all building permits and other permits or licenses required by the Governmental Requirements with respect to the construction and development of the Improvements, all of which are to be assigned to Lender as additional security for the Loan, in such manner as shall be acceptable to Lender's counsel;

(j) Evidence of the Property's compliance with the requirements of all applicable environmental protection, health, safety and other applicable laws, rules, codes and regulations, whether federal, state, or municipal, and that the Improvements are in full compliance with all Governmental Requirements relating to use, operation and occupancy;

(k) Evidence of the availability for hook-up at the boundaries of the Property of all utilities including specifically, but without limitation, gas, electricity, water services and storm and sanitary sewer facilities in sufficient sizes to service the Improvements;

(l) Evidence satisfactory to Lender's counsel that all necessary action on the part of Borrower has been taken with respect to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, so that this Agreement and all Security Instruments to be executed and delivered by or on behalf of Borrower will be valid and binding upon Borrower or on behalf of the person or entity executing and delivering such document in accordance with its or their terms. Such evidence shall include the legal opinion of legal counsel for Borrower, confirming such authority, validity, and binding effect of the documents in accordance with their terms, in form and content acceptable to Lender's legal counsel, and covering such other matters as Lender may require, with no exceptions other than such as may be acceptable to Lender and its counsel;

(m) A breakdown of all costs and expenses required to complete development of the Property and construction of the Improvements, in detail and in amounts acceptable to Lender;

(n) An Owner's Affidavit executed by Borrower with regard to mechanic's and materialman's liens and such other matters as Lender may require;

(o) Demonstration to Lender that Borrower has expended a minimum of [REDACTED] in upfront cash equity for the Improvements;

(p) Copies of all subcontracts for the construction related to the Improvements delivered to Lender and approved of by Lender and Lender's Consultant;

(q) Review and approval by Lender of the construction schedule for the Improvements (the "Construction Schedule");

(r) Review and approval by Lender of all plans and specifications for the Improvements;

(s) Lender's Consultant's report for the Improvements completed and reviewed and approved of by Lender in Lender's sole discretion;

(t) Evidence of Borrower's payment of the Loan Fee;

(u) Evidence of Borrower's deposit of all required funds into the pledged account at Lender;

(v) Such other conditions as may reasonably be required by Lender; and

(w) Such other documents as Lender or Lender's counsel shall reasonably require.

2.11 Conditions to Subsequent Advances. As a condition precedent to each subsequent Advance, in addition to all other requirements herein, Borrower must satisfy the following requirements and if required by Lender, deliver to Lender evidence of such satisfaction:

(a) The general conditions set forth in Section 2.2 and the conditions precedent to the first Advance shall have been satisfied and continue to be satisfied as at the date of the disbursement of any Advance;

(b) Borrower shall deliver to Lender, with copies to the Lender's Consultant, an Application for Advance accompanied by the documents and schedules set forth below to the extent such document applies, together with such other schedules, affidavits, statements, invoices, bills, and documents as Lender may reasonably request:

(1) A "Payment Request" on Lender's prescribed form containing a detailed budget breakdown specifying:

(i) the amount of the Loan proceeds allocated for each line item on the Approved Budget;

(ii) the amount of the Advance requested from each line item on the Approved Budget; and

(iii) the total Advances to date from each line item on the Approved Budget;

(2) A "Payee Schedule" on Lender's prescribed form itemizing all parties to be paid with the Advance and the amounts to be paid to each;

(3) A "Request for Funds Certification" on Lender's prescribed form, executed by Borrower and Contractor, stating among other matters:

(i) the labor services and/or materials covered by the Application for Advance shall have been performed upon or furnished in the construction of the Improvements;

(ii) there have been no changes in the Approved Budget except those approved by Lender in writing;

(iii) all work to date has been performed in substantial accordance with the Plans approved by Lender and in accordance with all requirements of Governmental Authority, and there have been no substantial changes in the Plans except as have been approved by Lender in writing or as otherwise permitted hereunder;

(iv) there have been no changes in the scope of time of performance of the work, nor any extra work, labor or materials ordered or contracted for, nor are any such changes or extras contemplated, except as have been approved by Lender in writing or as otherwise permitted hereunder;

(v) the payments to be made with the Advance requested will pay all bills received to date for any labor, materials and services furnished in connection with construction of the Improvements;

(vi) all Advances previously disbursed by Lender for labor, services, and/or materials for construction of the Improvements pursuant to previous Applications for Advances have been paid to the parties entitled thereto; and

(vii) all conditions precedent to an Advance have been fulfilled, and, to the knowledge of the persons executing the certification, no Event of Default, and no event which with notice or lapse of time or both would constitute such an Event of Default has occurred, or, if any such event or Event of Default has occurred, giving the details of such event;

(c) Borrower will deliver to Lender a date down endorsement to Lender's title policy approved of by Lender in Lender's sole discretion; and

(d) Borrower will procure and deliver to Lender, as required by Lender, releases or waivers of mechanic's liens, and invoices, or paid receipts if requesting reimbursements, of all parties who have furnished materials or services or performed labor of any kind in connection with the construction of any of the Improvements.

2.12 Conditions to the Final Advance. As a condition precedent to the final Advance of the Construction Loan as to the Improvements, including all unreleased retainage, Borrower must satisfy all general conditions precedent and all conditions precedent to the Initial Advance and to subsequent Advances, and in addition deliver to Lender the following:

(a) A completion certificate from the Lender's Consultant;

(b) Evidence that all Governmental Requirements have been satisfied, including, but not limited to, delivery to Lender of certificates of acceptance of all applicable Governmental Authorities approving those of the Improvements required by such Governmental Authorities in the form of a certificate of occupancy or other applicable certification from said Governmental Authorities;

(c) Evidence that no mechanic's or materialmen's liens or other encumbrances have been filed and remain in effect against the Property;

(d) A final as-completed survey for the Medical Tenant Space approved of by Lender in Lender's sole discretion; and

(e) Final lien releases or waivers by Architect, Contractor, and all subcontractors, materialmen, and other parties who have supplied labor, materials, or services for the construction of the Improvements, or who otherwise might be entitled to claim a contractual or statutory lien against the Property with respect to the Improvements.

(f) Issuance of certificate of occupancy for the Medical Tenant Space.

(g) Proof of a lease with the end user of the Medical Tenant Space.

2.13 Retainage. An amount ("Retainage") equal to five percent (5%) of all items where the Contractor or any subcontractor is supplying both labor and materials or labor only pursuant to the Construction Contract or any subcontract shall be retained by Lender from each Application for Advance until such time as the work subject to such Retainage is complete to Lender's satisfaction, Lender has received or concurrent with said payment will receive proof of payment for the specific Retainage items and a final irrevocable lien waiver with respect to such items. Retainage on any subcontract shall be released after such subcontract has been fully performed and the following conditions have been satisfied: (a) Borrower has delivered final and unconditional waivers of lien from the subcontractor whose individual subcontract has been fully performed to the Title Company with copies to Lender; (b) all conditions precedent to disbursement of proceeds of the Loan as set forth in this Agreement have been fully satisfied; and (c) Lender has received a certificate in writing signed by a duly authorized officer of Contractor and Architect certifying that the work provided for in the subcontract has been fully and satisfactorily completed in accordance with the Plans and specifications, and in compliance with all applicable laws, and the Lender's Consultant has approved all such work.

2.14 Reallocation of Approved Budget. Funds allocated to the contingency reserve shall be reallocated to specific line items in the Approved Budget from time to time upon the mutual agreement of Lender and Borrower.

2.15 No Waiver. No Advance shall constitute a waiver of any condition precedent to the obligation of Lender to make any future Advance or preclude Lender from thereafter declaring the failure of Borrower to satisfy such condition precedent to be an Event of Default or an event which with notice and/or passage of time could be an Event of Default.

2.16 Conditions Precedent for the Benefit of Lender. All conditions precedent to the obligation of Lender to make any Advance are imposed hereby solely for the benefit of Lender, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lender will refuse to make any Advance in the absence of strict compliance with such conditions precedent. All requirements of this Agreement may be waived by Lender, in whole or in part, at any time, to the extent specifically set forth in a subsequent writing executed by Lender.

2.17 Subordination. Lender shall not be obligated to make, nor shall Borrower be entitled to receive, any Advance until such time as Lender shall have received, to the extent requested by Lender, subordination agreements from Architect, Contractor, and all other persons furnishing labor, materials, or services for the design or construction of the Improvements, subordinating to the lien and/or security title of the Mortgage any lien, claim, or charge they may have against Borrower or the Property.

2.18 Undisbursed Proceeds. Lender shall not be obligated to disburse any proceeds of the Loan, other than Retainage, for work performed after the Completion Date.

2.19 Distributable Cash Flow. There shall be no distributable cash flow to the Borrower until such time as the Lender is repaid in full for the Loan and all other indebtedness of the Developer to the City, except for any forgivable loan that is not in default, is repaid in full.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower hereby represents and warrants to Lender as follows:

3.1 The Financial Statements. The Financial Statements are true, correct, and complete as of the dates specified therein and fully and accurately present the financial condition of Borrower and/or Contractor as of the dates specified. No material adverse change has occurred in the financial condition of Borrower and/or Contractor since the date of the Financial Statement.

3.2 Suits, Actions, Etc. There are no material actions, suits, or proceedings pending or threatened in any court or before or by any Governmental Authority against or affecting Borrower or the Property, or involving the validity, enforceability, or priority of any of the Security Instruments, at law or in equity. The consummation of the transactions contemplated hereby, and the performance of any of the terms and conditions hereof and of the other Security Instruments, will not result in a breach of, or constitute a default under, any mortgage, deed of trust, deed to secure debt, lease, promissory note, loan agreement, credit agreement, or other agreement to which Borrower is a party or by which Borrower may be bound or affected.

3.3 Valid and Binding Obligation. All of the Security Instruments, and all other documents referred to herein to which the Borrower is a party, upon execution and delivery will constitute valid and binding obligations of the Borrower, as the case may be, enforceable in accordance with their terms.

3.4 Title to the Property. From and after the initial disbursement of the Loan, the Borrower shall hold full legal title and Borrower shall hold full equitable title to the Property subject only to the title exceptions set forth in Borrower's title policy.

3.5 Commencement of Work. Except as disclosed in writing by the Borrower to the Title Company, no work of any kind (including the destruction or removal of any existing improvements, site work, surveying, staking, clearing, grubbing, draining or fencing of the Property) shall have commenced or shall have been performed on the Property, no equipment or material shall have been delivered to or upon the Property for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor, materials, or services for the construction of the Improvements shall have been recorded in the mechanic's lien or other appropriate records in the locality

where the Property is located. Borrower has disclosed to Lender and the Title Company that work on the Property has commenced.

ARTICLE 4 CONSTRUCTION

4.1 Commencement of Work. Borrower shall not commence the construction of any Improvements unless and until Borrower has unconditionally obtained all permits required by applicable Governmental Requirements as a condition precedent to the initiation and completion of the Improvements. Construction of the Improvements shall commence no later than _____, 2023.

4.2 Completion of Work. Borrower shall complete all construction of the Improvements by no later than _____, 2023, which shall be evidenced by a certificate of occupancy issued by the Lender on or before _____, 2023.

ARTICLE 5 GENERAL COVENANTS AND AGREEMENTS OF BORROWER

5.1 Compliance with Governmental Requirements. Borrower shall timely comply with all Governmental Requirements and deliver to Lender evidence reasonably satisfactory to Lender and its counsel as to such compliance. Borrower assumes full responsibility for the compliance of the Plans and the Property with all Governmental Requirements and also with sound building and engineering practices, as recommended by the Architect and/or the Lender's Consultant, and, notwithstanding any approvals by Lender, Lender shall have no obligation or responsibility whatsoever for the Plans or any other matter incident to the Property or the construction of the Improvements.

5.2 The Construction Contract. Borrower shall become party to no contract, including the Construction Contract, for the supplying of any labor, materials, or services for the construction of the Improvements except upon such terms and with such parties as shall be approved in writing by Lender. The Construction Contract has been approved by Lender. Borrower agrees to deliver to Lender a copy of each change order, whether or not Lender's approval thereto is required or has been given, within five (5) business days after the same has been executed. No approval of Lender of any Construction Contract or change order shall make Lender responsible for the adequacy, form, or content of such Construction Contract or change order.

5.3 Construction of the Improvements. The construction of the Improvements shall commence as provided for herein and shall thereafter be prosecuted with diligence and continuity, in a good and workmanlike manner, and in accordance with sound building and engineering practices, all applicable Governmental Requirements and in substantial accordance with the Plans. Borrower shall not permit cessation of work for a period in excess of thirty (30) days without the prior written consent of Lender and shall complete construction of the Improvements on or before the Completion Date, free and

clear of all liens. Borrower shall be permitted such additional time equal to delays, if any, resulting from strikes, inability to obtain material, riots, acts of God, fires or unforeseeably inclement weather but in any event not more than ninety (90) days in the aggregate, (hereinafter collectively referred to as "Customary Force Majeure Matters").

5.4 Correction of Defects. Borrower shall correct or cause to be corrected within thirty (30) days after receipt of written notice from Lender: (a) any defect in the Improvements; (b) any material departure in the construction of the Improvements from the Plans, Governmental Requirements, or the requirements of any lessee, if applicable; and (c) any encroachment by any part of the Improvements or any other structure located on the Property on any building line, easement, property line, or restricted area.

5.5 Storage of Materials. Borrower shall cause all materials supplied for, or intended to be utilized in, the construction of the Improvements, but not affixed to or incorporated into the Improvements or the Property, to be stored on the Property or at such other location as may be approved by Lender in writing prior to storage in such other location, with adequate safeguards, as required by Lender, to prevent loss, theft, damage, or commingling with other materials of other projects. Except as contemplated in Section 2.4 herein, no disbursement for material purchased but not yet installed or incorporated into the Improvements shall be made without Lender's prior approval of the conditions under which such materials are purchased and stored. Except as contemplated in Section 2.4 herein, in no event shall any such disbursement be made unless the materials involved have been delivered to the Property or stored with a bonded warehouseman, with satisfactory evidence of security, insurance both during storage and transit and suitable storage. Borrower shall provide Lender, in connection with such materials, a copy of a bill of sale or other evidence of title in Borrower, together with a copy of UCC searches against Borrower and the warehouseman, if applicable, indicating no liens or claims which may affect such materials. Borrower shall provide Lender, Lender's Consultant and any applicable governmental agency or testing authority having jurisdiction over the Improvements with access to inspect, test or otherwise examine such stored and unincorporated materials.

5.6 Inspection of the Property. At Borrower's sole cost and expense, Borrower shall permit Lender, and Governmental Authority, and their agents and representatives, to enter upon the Property and any location where materials intended to be utilized in the construction of the Improvements are stored for the purpose of inspection of the Property and such materials at all reasonable times upon prior notice.

5.7 Notices by Governmental Authority, Fire and Casualty Losses, Etc. Borrower shall timely comply with and promptly furnish to Lender true and complete copies of any official notice or claim by any Governmental Authority pertaining to the Property. Borrower shall promptly notify Lender of any fire or other casualty or any notice of taking or eminent domain action or proceeding affecting the Property.

5.8 Costs and Expenses. Borrower shall pay when due all costs and expenses required by this Agreement, including, without limitation: (a) all taxes and assessments applicable to the Property; (b) all fees for filing or recording the Security Instruments; (c) all fees and commissions lawfully due to brokers, salesmen, and agents in connection with the Loan or the Property; (d) all reasonable fees and expenses of counsel to Lender and the fees and costs of the Lender's Consultant; (e) all title charges; (f) all survey costs and expenses; (g) all premiums for insurance policies; and (h) all other costs and expenses payable to third parties incurred by Lender in connection with the consummation of the transactions contemplated by this Agreement, including any costs incurred in connection with inspection of the Property while under construction.

5.9 Additional Documents. Borrower shall execute, and shall cause, and deliver to Lender, from time to time as requested by Lender, such other documents as shall be necessary to provide the rights and remedies to Lender granted or provided for by the Security Instruments.

5.10 Inspection of Books and Records. Borrower shall permit Lender, at all reasonable times, upon prior notice, to examine and copy the books and records of Borrower pertaining to the Loan and the Property, and all contracts, statements, invoices, bills, and claims for labor, materials, and services supplied for the construction of the Improvements.

5.11 No Liability of Lender. Lender shall have no liability, obligation, or responsibility whatsoever with respect to the construction of the Improvements except to advance the Loan and the Borrower's Deposit pursuant to this Agreement. Lender shall not be obligated to inspect the Property or the construction of the Improvements, nor be liable for the performance or default of Borrower, Architect, the Lender's Consultant, Contractor, or any other party, or for any failure to construct, complete, protect, or insure the Improvements, or for the payment of costs of labor, materials, or services supplied for the construction of the Improvements, or for the performance of any obligation of Borrower whatsoever. Nothing in this Agreement or in any of the other Security Instruments, including without limitation any Advance or acceptance of any document or instrument, shall be construed as a representation or warranty, express or implied, to any party by Lender.

5.12 Insurance. Borrower shall maintain in full force until full payment of the Loan such insurance on the Property as is required by Lender pursuant to the Security Instruments, including but not limited to:

(a) A physical damage hazard insurance policy written on a builder's risk, completed value, non-reporting form, which shall include coverage therein for "completion and/or premises occupancy" and shall also include insurance against theft or casualty materials not yet incorporated into the Improvements. The amount of insurance coverage shall be that which is required to prevent the application of any insurance policy co-insurance contribution on any loss but in

no event less than the full amount of the Loan from time to time outstanding. In addition, coverage shall not be less than that encompassed by "fire, extended coverage, vandalism and malicious mischief"; perils broadened to include the so-called "all risk of physical loss";

(b) Comprehensive general liability insurance covering Borrower and Contractor, in such amounts as Lender may require, but in any event not less than One Million Dollars (\$1,000,000.00) bodily injury and/or property damage liability per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate;

(c) Workers' Compensation insurance for construction of the Improvements in accordance with the applicable requirements of law; and

(d) Builders' Risk insurance with respect to the Improvements.

Lender reserves the right herein, when it deems necessary, to require additional physical damage hazard insurance such as, but not limited to:

(a) Flood, including surface waters;

(b) Earthquake, including subsidence;

(c) Collapse due to faulty construction and/or error design and/or faulty workmanship; and

(d) Contingent liability from the operation of any building laws pertaining to non-conforming property.

Casualty insurance policies shall name Lender as mortgagee under a long form noncontributory endorsement and shall be evidenced by the delivery of the original or certified copy of the policy to Lender. The original of each insurance policy shall be delivered to Lender. All insurance required herein shall be issued by responsible carriers acceptable to Lender and guarantee at least thirty (30) days prior written notice to Lender of cancellation, non-renewal or material change.

5.13 No Conditional Sale Contracts, Etc. No materials, equipment, or fixtures shall be supplied, purchased, or installed for the construction or operation of the Improvements pursuant to security agreements, conditional sale contracts, lease agreements, or other arrangements or understandings whereby a security interest or title is retained by any party or the right is reserved or accrued to any party to remove or repossess any materials, equipment, or fixtures intended to be utilized in the construction or operation of the Improvements.

5.14 Defense of Actions. Lender may (but shall not be obligated to) commence, appear in or defend, at Borrower's expense, any third-party action or

proceeding purporting to affect the Loan, the Property, or the respective rights and obligations of Lender and Borrower pursuant to this Agreement. Lender may (but shall not be obligated to) pay all expenses, including attorneys' fees incurred in connection with such proceedings or actions, which Borrower agrees to repay to Lender upon demand, and if not so paid shall become part of the indebtedness secured by the Security Instruments and shall bear interest at the Default Rate of interest payable under the Note.

5.15 Bills of Sale. Borrower shall deliver to Lender, on demand, copies of any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien or security title of the Security Instruments.

5.16 Leases. Borrower shall not, without the prior written consent of Lender: (i) execute or permit to exist any lease for the Medical Space; (ii) modify or vary, surrender or terminate, either orally or in writing, any approved lease any portion of Medical Tenant Space resulting in terms less favorable to Borrower than those existing as of the date hereof;

5.17 No Assignment by Borrower. This Agreement is personal to Borrower and may not be assigned by Borrower without the prior written consent of Lender. If Lender approves an assignment hereof by Borrower, Lender shall be entitled to make Advances to such assignee and such Advances shall be secured by the Security Instruments. Notwithstanding any of the foregoing, Borrower shall remain liable for payment of all sums advanced hereunder before and after such assignment.

5.18 Further Assurance of Title. If at any time Lender's counsel is of the opinion that any Advance is not secured or will or may not be secured by the Security Instruments as a first lien or first security title on the Property, subject only to the matters in the title insurance policy insuring the Security Interests and approved by Lender, then Borrower shall, within thirty (30) days after written notice of such opinion from Lender, do all things and matters necessary to assure to the satisfaction of Lender's counsel that any Advance previously made hereunder or to be made hereunder is secured or will be secured by the Security Instruments as a first lien or security title on the Property, subject only to the matters in the title insurance policy insuring the Security Interests and approved by Lender, and Lender, at its option, may decline to make further Advances hereunder until Lender has received such assurance.

5.19 Payment of Claims. Subject to the right of Borrower to contest liens as provided in the Security Instruments, Borrower shall promptly pay or cause to be paid when due all costs and expenses incurred in connection with the Property and the construction of the Improvements, and Borrower shall keep the Property free and clear of any liens, charges, or claims other than liens approved in writing by Lender.

5.20 Restrictions and Annexation. Subsequent to the initial disbursement of the Loan, and with the exception of a Storm Water Operating and Maintenance

Agreement and the Declaration of Covenants, Restrictions and Easements, to the extent not then recorded, Borrower shall not impose any restrictive covenants or encumbrances upon the Property, execute or file any subdivision plat affecting the Property, or consent to the annexation of the Property to any municipality without the prior written consent of Lender, which consent will not be unreasonably withheld.

5.21 Advertising by Lender. Borrower agrees that during the term of the Loan, Lender shall have the right to issue press releases, advertisements and other promotional materials describing in general terms Lender's participation in such transaction, and at Lender's request, Borrower shall erect a sign for display at a mutually agreeable location upon the Property identifying Lender during the construction period. Any such sign shall be provided at the expense of Lender.

5.22 Borrower/Property Financial Statements. Prior to execution of this Agreement by the City, and within one hundred twenty (120) days after the end of each calendar year Borrower and Guarantors shall furnish to Lender, through the City's Chief Financial Officer, true and complete copies of their Financial Statements for such fiscal year. Borrower shall also furnish from time to time such other information about the business and financial affairs of Borrower as Lender may reasonably request. All statements furnished by Borrower shall be certified by Borrower to be true and correct in all material respects.

5.23 Notification of Adverse Changes. Borrower shall promptly, but not more than ten (10) days after Borrower learns of the occurrence thereof, notify Lender of the occurrence of any event or condition which, if not remedied, would result in a material, adverse change to the financial condition of Borrower or would materially and adversely affect the value of the Property or any portion thereof, or which is a material adverse change as set forth in Section 2.2(b) above.

5.24 Indemnification. Borrower agrees to indemnify, defend and hold Lender harmless from and against any and all claims, charges, actions, suits, proceedings, lawsuits, obligations, liabilities, fines, penalties, costs and expenses, including but not limited to reasonable attorneys' fees incurred by Lender, alleged by or in favor of Borrower or any principal, partner, stockholder, officer, director, member, manager, employee or agent thereof, or by or in favor of any broker, realtor, agent or other party claiming brokerage commissions or finder's fees in connection with entering into this Agreement or the transactions contemplated hereby (other than for claims for commissions or fees claimed by persons or parties employed or engaged by Lender or claims arising from or relating to the gross negligence or intentional misconduct of Lender), or in connection with the collection of the Loan or the enforcement of the Security Instruments or the attempt to foreclose and otherwise realize on collateral after the occurrence of an Event of Default. The obligations and provisions of this paragraph shall continue and remain in full force and effect after the Loan and other obligations of Borrower under this Agreement and under the other Security Instruments have been paid or discharged in full and shall survive the termination of this Agreement and the repayment of the Loan.

ARTICLE 6 EVENTS OF DEFAULT

6.1 Events of Default. Any one or more of the following events shall constitute Events of Default hereunder:

(a) An Event of Default under the Note, or a default under any of the other Security Instruments (including this Agreement) and the expiration of any applicable grace period, if any; or

(b) If any material representation or warranty of Borrower shall be false or inaccurate at the time made (or at the time the same may be deemed to have been remade); or

(c) If Borrower fails to provide Lender with _____ on or before _____ (____) days after the date of this Agreement; or

(d) If any of the following occurs as determined by Lender in Lender's sole discretion: (i) a discontinuance or abandonment of construction occurs for a period of thirty (30) days, or (ii) in any event a delay in construction of the Improvements so that the same, in Lender's reasonable judgment, is not likely to be completed on or before the Completion Date; or

(e) Failure by Borrower to deposit with Lender funds required to maintain the loan in balance within the time and in the manner required herein; or

(f) The termination of the Contractor's contract, the Architect's contract or the engineer's contract without Lender's prior written consent;

(g) Failure to comply with the Construction Schedule; or

(h) If the conditions for Final Disbursement set forth in Section 2.12 hereof are not complied with prior to the Completion Date.

ARTICLE 7 RIGHTS AND REMEDIES OF LENDER

7.1 Rights and Remedies of Lender. Upon the occurrence of any one or more Events of Default, Lender shall have the right, in addition to any other right or remedy of Lender under the Security Instruments or under applicable law, in its own name or through an agent or in the name of Borrower to enter into possession of the Property, to perform all work necessary to complete the construction and equipping of the Improvements substantially in accordance with the Plans or in such other manner as

shall be acceptable to Lender, in accordance with Governmental Requirements, and to do anything necessary or desirable in Lender's sole judgment to fulfill the obligations of Borrower hereunder and under the other Security Instruments, including the right to avail itself of and procure performance of the Construction Contract and subcontracts or to let new or additional contracts with the Contractor or the same subcontractors or to others, and to employ watchmen and other safeguards to protect the Property. Without restricting the generality of the foregoing, and for the purposes aforesaid, Borrower hereby appoints Lender as the attorney-in-fact of Borrower, with full power of substitution, and in the name of Borrower, if Lender elects to do so, upon the occurrence of an Event of Default, to (a) use such sums as are necessary, including any proceeds of the Loan and the Borrower's Deposit, to make such changes or corrections in the Plans, and employ such architects, engineers, inspectors, rental agents, managers and contractors as may be required for the purpose of completing the Improvements substantially in the manner as aforesaid, (b) execute all applications and certificates in the name of Borrower which may be required for completion of construction of the Improvements, (c) endorse the name of Borrower on any checks or drafts representing proceeds of insurance, or other checks or installments payable to Borrower with respect to the Property, (d) do every act with respect to the construction of the Improvements which Borrower may do, (e) prosecute or defend any action or proceeding incident to the Property, (f) to do all things necessary in Lender's sole judgment, to complete construction, finishing and equipping of the Improvements and to rent, operate and manage the Improvements, and to pay operating costs and expenses, including management fees, of every kind and nature in connection therewith so that the same shall be operational and usable for its intended purpose, all in the name of Borrower, Lender or both; (g) to pay interest when due on all amounts disbursed hereunder (either by adding such interest to the principal balance of the Loan or paying the same in cash); (h) to pay, settle or compromise all existing bills and claims which may be or become liens or security interests, or to avoid such bills and claims becoming liens against the Property or against fixtures or equipment, or as may be necessary or desirable for the completion of construction or for the equipping and operation of the Improvements; and (i) to prosecute and defend all actions or proceedings in connection with the Property or any equipment or fixtures. The power-of-attorney granted hereby is a power coupled with an interest and is irrevocable. Lender shall have no obligation to undertake any of the foregoing actions, and if Lender should do so, it shall have no liability to Borrower for the sufficiency or adequacy of any such actions taken by Lender except to the extent of the willful misconduct or gross negligence of Lender. All costs and expenses, including all attorneys fees in connection with the matters contemplated in this Section 7.1 shall be payable by Borrower on demand, and if not promptly paid, shall be added to the principal of the Loan and shall be secured by all of the Security Instruments.

7.2 Acceleration. Upon the occurrence of an Event of Default Lender may, at its option, without notice, declare the Loan immediately due and payable in full.

7.3 Cessation of Advances. Upon the occurrence of an Event of Default, the obligation of Lender to make any Advance and to make disbursements and all other

obligations of Lender hereunder and under the Security Instruments shall, at Lender's option, immediately terminate; provided, however, that nothing in this paragraph shall be deemed to limit the other provisions of this Agreement setting forth the conditions precedent to Lender's obligation to make any Advance or the conditions under which Lender may refuse to make further disbursements or to limit Lender's option to make further Advances at Lender's sole option notwithstanding the occurrence of one or more Events of Default.

7.4 Funds of Lender. Any funds of Lender used for any purpose referred to in this Article VII shall constitute Advances secured by the Security Instruments and shall bear interest at the rate specified in the Note to be applicable after default thereunder.

7.5 No Waiver or Exhaustion. No waiver by Lender of any of its rights or remedies hereunder, in the other Security Instruments, or otherwise, shall be considered a waiver of any other or subsequent right or remedy of Lender; no delay or omission in the exercise or enforcement by Lender of any rights or remedies shall ever be construed as a waiver of any right or remedy of Lender; and no exercise or enforcement of any such rights or remedies shall ever be held to exhaust any other right or remedy of Lender.

ARTICLE 8 GENERAL TERMS AND CONDITIONS

8.1 Modifications. No provision of this Agreement or the other Security Instruments may be modified, waived, or terminated except by an instrument in writing executed by the party against whom a modification, waiver, or termination is sought to be enforced.

8.2 Severability. To the extent that any of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect such provisions or any other provision hereof except to the extent specifically so held invalid, illegal or unenforceable, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

8.3 Election of Remedies. Lender shall have all of the rights and remedies granted in this Agreement and in the Security Instruments in addition to such rights and remedies that may be available to Lender at law or in equity, and all such rights and remedies shall be cumulative and may be pursued separately, successively, or concurrently against the Borrower or any property covered under the Security Instruments at the sole discretion of Lender. The exercise or failure to exercise any of the same shall not constitute a waiver or release thereof or of any other right or remedy, and such exercise or failure to exercise shall be nonexclusive.

8.4 Form and Substance. All documents, certificates, insurance policies, and other items required under this Agreement to be executed and/or delivered to Lender shall be in form and substance satisfactory to Lender and its counsel.

8.5 Savings Clause. It is the intention of the parties hereto to comply with all applicable federal and state laws relating to usury; that is, laws limiting charges for the use, detention or forbearance of money and governing contracts relating therein; accordingly, all agreements between Borrower and Lender, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of the money to be loaned hereunder or otherwise, or for the performance or payment of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to the Loan, exceed the maximum amount permitted to be charged under applicable federal or state usury laws. If under any circumstance whatsoever fulfillment of any provision hereof or of any such other document, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then, automatically, the obligation to be fulfilled shall be reduced to the limit of such validity, and if under any such circumstances Lender shall ever receive anything of value deemed interest by applicable law which would exceed the maximum rate permitted under applicable federal or state usury laws, an amount equal to any excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of any other principal indebtedness of Borrower to Lender, and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of such principal and such other indebtedness, such excess shall be refunded to Borrower. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the indebtednesses of Borrower to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full in such manner as permitted by law so as to avoid any portion of the interest on the Loan becoming usurious. The terms and provisions of this Section shall control and supersede every other provision of all agreements between Borrower and Lender in the event of a conflict in such provision.

8.6 No Rights of Third Parties. All conditions of the obligations of Lender hereunder, including the obligation to make Advances, are imposed solely and exclusively for the benefit of Lender and its successors and assigns and no other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will make any Advances hereunder or will refuse to make Advances in the absence of strict compliance with any or all of the terms and conditions hereof, and no other person or entity shall, under any circumstances, be deemed to be a beneficiary of this Agreement (express or implied), all of the terms and conditions of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it desirable to do so, and Lender reserves the right to enter into modifications or amendments of this Agreement with Borrower without notification to or the consent of any other party. In

particular, Lender makes no representations and assumes no obligations as to third parties concerning the quality of the construction of the Improvements by Borrower or the absence thereof of defects. In this connection Borrower agrees to and shall indemnify Lender from any liability, claims or losses resulting from the disbursement of the proceeds of the Loan or from the condition of the Property whether related to the quality of the construction or otherwise and whether arising during or after the term of the Loan. This provision shall survive the repayment of the Loan and termination of this Agreement and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists.

8.7 Evidence of Satisfaction of Conditions. Any condition of this Agreement which requires the submission of evidence of the existence or nonexistence of a specified fact or facts implies as a condition the existence or nonexistence, as the case may be, of such fact or facts and Lender shall, at all times, be free independently to establish to its satisfaction and in its absolute discretion such existence or nonexistence.

8.8 All Matters Satisfactory to Lender. All proceedings taken in connection with the transactions provided for herein, all surveys, appraisals and documents required or contemplated by this Agreement or the other Security Instruments and the persons responsible for the execution and preparation thereof, Contractor and all subcontractors, all sureties, insurers, the form of the construction contract and all subcontracts, all leases, bonds, guaranties and policies of insurance shall be satisfactory to Lender and Lender's counsel, Klein, Thorpe and Jenkins, LTD., who shall receive copies (or certified copies where appropriate in Lender's counsel's judgment) of all documents which it may request in connection therewith.

8.9 No Agency. Lender is not the agent or representative of Borrower, and Borrower is not the agent or representative of Lender, and nothing in this Agreement shall be construed to make Lender liable to anyone for goods delivered or services performed upon the Property or for debts or claims accruing against Borrower. Nothing herein shall be construed to create a relationship ex contractu or ex delicto between Lender and anyone supplying labor or materials to the Property.

8.10 No Partnership or Joint Venture. Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between Borrower and Lender.

8.11 Number and Gender. Whenever used herein, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders. The duties, covenants, obligations, and warranties of Borrower in this Agreement shall be joint and several obligations of Borrower, and of each Borrower if more than one.

8.12 Time of Essence. Time is of the essence in performance of this Agreement by Borrower.

8.13 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

8.14 Participation. Lender shall have the right, at its sole discretion, to invite participants to participate in or to purchase all or portions of the Loan, and Borrower agrees to execute any documents reasonably requested by Lender in connection with any such participation or purchase.

8.15 Further Assurances. Borrower shall, do, execute, acknowledge and deliver, at the sole cost and expense of Borrower, all and every such further acts, deeds, conveyances, mortgages, assignments, estoppel certificates, notices of assignment, transfers and assurances as Lender may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto the Lender, the rights now or hereafter intended to be granted to the Lender under the Security Instruments for carrying out the intention of facilitating the performance of the terms of this Agreement.

8.16 Notices. All notices by Lender to Borrower pursuant to this Agreement or of the other Security Instruments which require the giving of notice as a condition to creating or effectuating an obligation of Borrower to Lender or a right on the part of Lender to exercise rights or remedies against Borrower or any collateral, and any notice by Borrower to Lender to the effect that Lender has not fulfilled one or more of its obligations to Borrower under this Agreement or under any other Security Instrument, must be in writing. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or electronic facsimile transmission or email thereof, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, to the addresses below, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

If to Lender:

with a copy to:

and a copy to:

If to Borrower:

and a copy to:

8.17 Applicable Law, Venue. This Agreement and the other Security Instruments shall be governed by and construed in accordance with the laws of the State of Illinois and the laws of the United States applicable to transactions within such State. Any legal action shall be taken in the Circuit Court of Kane County, Illinois.

8.18 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed Loan Documents maintained by Lender shall be deemed to be originals.

8.19 Prevailing Wage. To the extent required by the Illinois Prevailing Wage Act (820 ILCS 130/0.01, et seq.) ("Prevailing Wage Act"), Developer shall pay any applicable "Prevailing Wage Rates" to any of its workers on the Project, and comply with the Prevailing Wage Act.

8.20 Incorporation of Documents. The Approved Budget, Construction Contract, Construction Schedule and Security Instruments, as they may be revised, updated or amended, are incorporated into this Agreement, as if fully set forth.

8.21 Equal Employment Opportunity.

(a) No Discrimination. Developer shall comply with all federal, State and local laws relating to equal employment opportunity. To the extent permitted by law, Developer shall use reasonable efforts to employ qualified residents of the City.

(b) Advertisements. Developer shall, in all solicitations or advertisements for employees placed by or on behalf of Developer state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) Contractors. Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in Subsections A. and B. above.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY:

CITY OF AURORA,
an Illinois home rule municipal corporation

ATTEST:

By: _____
Richard C. Irvin, Mayor

By: _____
Jennifer Stallings, City Clerk

DEVELOPER:

FOX VALLEY DEVELOPERS, LLC,
an Illinois limited liability company

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

GUARANTOR:

JASON KONRAD

GUARANTOR:

RUSSELL WOERMAN

GUARANTOR:

MICHAEL POULAKIDAS

GUARANTOR:

PAUL KONRAD

GUARANTOR:

STATHIS POULAKIDAS

ACKNOWLEDGMENT

State of Illinois)
) SS
County of Kane)

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

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

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____ and _____, personally known to me to be the _____ and _____, respectively, of _____ (“_____”), 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 _____ and _____, they each signed and delivered the said instrument as their free and voluntary acts, and as the free and voluntary act and deed of said _____, for the uses and purposes therein set forth.

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

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she each signed and delivered the said instrument as his/her free and voluntary acts for the uses and purposes therein set forth.

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

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she each signed and delivered the said instrument as his/her free and voluntary acts for the uses and purposes therein set forth.

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

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she each signed and delivered the said instrument as his/her free and voluntary acts for the uses and purposes therein set forth.

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

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she each signed and delivered the said instrument as his/her free and voluntary acts for the uses and purposes therein set forth.

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

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she each signed and delivered the said instrument as his/her free and voluntary acts for the uses and purposes therein set forth.

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

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Address of Property:

Permanent Index No.: _____