

**SECOND AMENDMENT TO THE REDEVELOPMENT AGREEMENT
FOR THE AVALON HEIGHTS DEVELOPMENT
IN THE CITY OF AURORA, ILLINOIS**

This **SECOND AMENDMENT TO THE REDEVELOPMENT AGREEMENT FOR THE AVALON HEIGHTS DEVELOPMENT IN THE CITY OF AURORA, ILLINOIS** ("Second Amendment") is made and entered into as of the ____ day of _____, 2020 ("Effective Date") by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation ("City"), East Aurora Public School District 131, an Illinois public school district ("School District"), Fox Valley Developers, LLC, an Illinois limited liability company ("Developer"), and Jason Konrad, Russell Woerman, Michael Poulakidas, Paul Konrad, Stathis Poulakidas and Ronald Woerman (together Jason Konrad, Russell Woerman, Michael Poulakidas, Paul Konrad, Stathis Poulakidas and Ronald Woerman are the "Guarantors"). The City, the School District and the Developer are sometimes referred to herein individually as a "Party," and collectively as the "Parties."

WITNESSETH:

IN CONSIDERATION of the following preliminary statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

I. DEFINITIONS

For the purposes of this Second Amendment, unless the context clearly requires otherwise, capitalized words and terms used in this Second Amendment shall have the meanings provided for in the "Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois," dated November 12, 2019, by and between the City, the Developer and the Guarantors ("Original Redevelopment Agreement"), as amended by the "First Amendment to the Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois," dated August 10, 2020, by and between the City, the School District, the Developer and the Guarantors ("First Amendment," which together with the Original Redevelopment Agreement are collectively the "Redevelopment Agreement"), unless otherwise defined in this Second Amendment.

II. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Second Amendment are the following, which are hereby added to the Preliminary Statements in the Redevelopment Agreement:

- RR. In Resolution No. R20-135, titled "A Resolution Authorizing the Amendment of a Redevelopment Agreement Between the City And Fox Valley Developers, LLC and the Amendment of an Intergovernmental Agreement Between the City and the Board of Education of East Aurora Public School

District 131, both related to the Redevelopment of the Former Copley Hospital,” adopted July 14, 2020, the City approved the First Amendment.

- SS. Since approval of the First Amendment, the Developer has continued construction on the School District Building, the City and the School District deposited the City Advance and the School District Advance, respectively, the City created the New TIF District and the Developer has pursued the Project Remainder Funding.
- TT. Construction of the School District Building is expected to be substantially complete on or around January 15, 2021.
- UU. Since approval of the First Amendment, the Developer was informed that the School District Building construction requires that additional time must be made for inspections by State and Federal agencies after the Developer completes the School District Building to allow for the issuance of a tax credit certificate, due to the building being functionally related to the other buildings on the site as defined by both the State and Federal Agencies. The inspections and time for issuance of the tax credit certificate are expected to cause a delay in the conveyance of the School District Building from the Developer. While the conveyance of the School District Building to the School District will be delayed, the ability of the School District to occupy the building under the terms of the Commercial Lease dated February 3, 2020 should not be delayed because of these additional inspections and time needed for the issuance of the tax certificate.
- VV. The Developer has requested reasonable extensions to certain deadlines in the Redevelopment Agreement to allow construction of the School District Building to be completed and to allow for related inspections to occur.
- WW. The City, the School District and the Developer desire to advance the Project in accordance with the terms of this Second Amendment.

III. AMENDMENTS TO REDEVELOPMENT AGREEMENT

Amendment One – References in Redevelopment Agreement:

All references in the Redevelopment Agreement to the “Agreement” are amended to be to the “Agreement, as amended by the First Amendment and the Second Amendment.” All references in the Redevelopment Agreement to the “First Amendment” are amended to be to the “First Amendment, as amended by the Second Amendment.”

Amendment Two – Amendments:

- A. Section VI.C.1. of the Redevelopment Agreement is amended to read as follows, with additions underlined and deletions struck through:

“The City shall reimburse the Developer for TIF Eligible Redevelopment Costs from two (2) ~~three (3)~~ sources: (i) a Three Million and No/100 Dollars (\$3,000,000.00) advance of Incremental Property Taxes which the City will recoup from Incremental Property Taxes (“TIF Advance”), which shall be repaid as set forth in Section VI.C.5. 4. below, ~~(ii) a Three Million and No/100 Dollars (\$3,000,000.00) grant (“City Grant”),~~ and (iii) a loan of Six Three Million and No/100 Dollars (\$6,000,000.00) ~~3,000,000.00~~ (“Forgivable Loan”), which shall be repaid as set forth in Section VI.D.2. below. Together, the TIF Advance and the Forgivable Loan shall not exceed the amount of Nine Million and No/100 Dollars (\$9,000,000.00) (“Lump Sum Payments”).”

- B. Section VI.C.2.a. of the Redevelopment Agreement is amended to read as follows, with additions underlined and deletions struck through:

“If the Developer obtains the “SHTC Bridge Loan,” “FHTC Bridge Loan” and “Construction Loan – Main Building” components of the Project Remainder Funding in EXHIBIT E (collectively the “Initial Construction Financing”) by the Funding Deadline, if the Developer has incurred expenses and required interest reserves of a total of no less than Nineteen Million Five Hundred Thousand and No/100 Dollars (\$19,500,000.00) of the Project Remainder Funding on the Project Remainder and if the Developer is in compliance with its obligations in the Agreement, as amended by the First Amendment and the Second Amendment, Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) (“First Lump Sum Payment”) of the Forgivable Loan shall be paid deposited into a strict joint order construction escrow with Chicago Title Insurance Company, pursuant to instructions that are not inconsistent with this Agreement, within thirty (30) days of a written request approved by the City’s Chief Financial Officer from the Developer, but in any event no later sooner than January 31, 2021 ~~December 1, 2020~~, so long as the conditions for deposit of the First Lump Sum Payment are met and after the issuance of a temporary final ~~final~~ certificates of occupancy by the City’s Director of Development Services for the School District Building and the related public and private infrastructure to be constructed by the Developer.”

- C. Section VI.C.2.b. of the Redevelopment Agreement is amended and shall read as follows, with additions underlined and deletions struck through:

“If the Developer obtains the Project Remainder Funding by the Funding Deadline and if the Developer is in compliance with its obligations in the Agreement, as amended by the First Amendment and the Second Amendment, Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) shall be paid (“Second Lump Sum Payment”) within thirty

(30) days of a written request from the Developer after the ~~earlier~~ later of (i) the Commencement Date, including completion of the private and public Project infrastructure to be constructed by the Developer, and (ii) a ~~final~~ temporary certificate of occupancy being issued by the City's Director of Development Services for the "Senior Housing and IDD Uses," and completion of "white box" finishes in, or "turn-key" finishes for leased portions of, the "Commercial Uses," as described and depicted in EXHIBITS C and D ~~or (iii) users occupying and operating the Senior Housing and IDD Uses and Commercial Uses;~~ but in any event, no sooner than June 30, 2021. The date this payment is made shall be the "Second Lump Sum Payment Date."

- D. Section VI.D.2. of the Redevelopment Agreement is amended to read as follows, with additions underlined and deletions struck through:

"For the Forgivable Loan:

a. No interest shall accrue on the Forgivable Loan.

b. The principal balance of the Forgivable Loan shall be forgiven at the rate of Six ~~Three~~ Hundred Thousand and No/100 Dollars (\$600,000.00 ~~300,000.00~~) per year, beginning the later of one (1) year from the Commencement Date, or one (1) year from the payment of the First Lump Sum Payment, so long as the Developer is in compliance with its obligations under this Agreement.

c. If the Developer sells the Property and no longer owns any portion thereof, other than as a result of a transfer, sale or conveyance that is due to a foreclosure or an assignment in lieu of foreclosure, then the remaining balance of the Forgivable Loan shall be paid to the City, after the first mortgage has been satisfied, at the closing on the conveyance of the last portion of the Property owned by the Developer. In the event that the Property is conveyed by foreclosure or an assignment in lieu of foreclosure, the Forgivable Loan shall continue to be forgiven at the rate set forth in Section VI.D.2.b. above, provided that the successor owner continues to comply with the obligations of Developer hereunder.

d. The balance of the Forgivable Loan, if any, remaining at the end of the Term of this Agreement shall be forgiven and eliminated."

- E. Section XVII.A.1. of the Redevelopment Agreement is amended to read as follows, with additions underlined and deletions struck through:

"The Developer shall complete construction of the School District Building, and the related public and private infrastructure not otherwise constructed

by the City as part of the Seminary Project, and receive a temporary final certificate of the occupancy from the City therefor, as set forth in Section XVII.A.7. below on or before ~~December 31, 2020~~ January 30, 2021 ("School District Building Construction Deadline"), subject to Uncontrollable Circumstances."

- F. Section XVII.A.6. of the Redevelopment Agreement is amended to read as follows, with additions underlined and deletions struck through:

"With regard to completion of the School District Building, which shall occur promptly at the last of (i) all work on the School District Building and the related public and private infrastructure to be constructed by the Developer is complete and has obtained a final certificate of occupancy from the City, ~~and~~ (ii) the School District Building is ready in "turnkey condition," into the School District Building Escrow and (iii) the State of Illinois Historic Preservation Office has issued a tax credit certificate for the School Building, which issuance the Developer shall actively and diligently pursue using its best efforts:

- i. The School District shall deposit the remainder of the purchase price for the School District Building, less the School District Advance, in the School District Building Escrow.
- ii. Simultaneously with the School District taking title to the School District Building ("Closing Date"), the Escrow Agent shall repay the City Advance, with interest, to the City from the School District Building Escrow.
- iii. On the Closing Date, the School District shall take title to the School District Building pursuant to the terms of the Purchase Agreement and the Closing Documents, and the Closing Documents shall be dated, the School District Building deed recorded with the Kane County Recorder's Office and the remaining Closing Documents released from the School District Building Escrow."

- G. Section XVII.A.11. of the Redevelopment Agreement is amended to read as follows, with additions underlined and deletions struck through:

"The Developer shall repay the City Advance, with interest, and the School District Advance, with interest, in full on or before ~~December 31, 2020~~ June 15, 2021 ("Repayment Deadline")."

- H. Section XVII.A.12. of the Redevelopment Agreement is amended to read as follows, with additions underlined and deletions struck through:

“If the City Advance, with interest, has not been repaid in full on or before the Repayment Deadline, subject to Uncontrollable Circumstances, including but not limited to a COVID-19 condition that results in either medically required quarantine or a governmental shutdown, after good faith negotiations with the Developer, the City may, jointly with the School District or individually, (a) withdraw all unpaid portions of the City Advance from the School District Building Escrow, (b) foreclose on its interest in the Second Mortgage, (c) recover the amounts owed pursuant to the Personal Guaranties, or (d) initiate such legal action as it determines appropriate to obtain repayment. Furthermore, should Developer fail to secure the “Project Remainder Funding,” as defined in Section XVII.B.1. below, by ~~December 31, 2020~~ the Funding Deadline, the City may obtain, record and foreclose on the Backup Mortgage.”

Amendment Three – Exhibits:

- A. EXHIBIT G attached to this Second Amendment, “Acknowledgement Agreement (Assignment of TIF Grant Proceeds)” (“Acknowledgment”) is added to the Redevelopment Agreement as EXHIBIT G. The City Mayor and the City Clerk are authorized and directed to execute the Acknowledgement in substantially the form attached as EXHIBIT G.

IV. MISCELLANEOUS

- A. **Limited Joinder.** The School District joins this Second Amendment solely for the limited purposes of agreeing to be bound by the School District’s obligations in Section XVII. of the Redevelopment Agreement.
- B. **Remainder of Redevelopment Agreement.** All portions of the Redevelopment Agreement, not amended hereby, shall remain in full force and effect.
- C. **Counterparts.** This Second Amendment shall be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Second Amendment.
- D. **Recording and Running with Title.** The Parties agree to record this Second Amendment with the Kane County Recorder’s Office against title to the Property. The Developer shall pay the recording charges. The obligations of Developer in this Second Amendment shall run with title to the land of the Property and be binding on future owners of the Property and any portion thereof.
- E. **Effective Date.** This Second Amendment shall be deemed dated and become effective on the day on which this Second Amendment is executed by the City, with said date appearing on page 1 hereof.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

CITY:

CITY OF AURORA,
an Illinois home rule municipal corporation

ATTEST:

By: _____
Richard C. Irvin, Mayor

By: _____
Jennifer Stallings, City Clerk

SCHOOL DISTRICT:

EAST AURORA PUBLIC SCHOOL DISTRICT,
an Illinois public school district

ATTEST:

By: _____
Annette Johnson, President

By: _____
Kimberly Hatchett, Secretary

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

GUARANTOR:

RONALD WOERMAN

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 Stalling, 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 _____, 2020.

Notary Public

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 Annette Johnson and Kimberly Hatchett, personally known to me to be the President and Secretary of the East Aurora Public School District 131, 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 President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said public school district to be affixed thereto, pursuant to authority given by the Board of Education of said Illinois public school district, as their free and voluntary acts, and as the free and voluntary act and deed of said Illinois public school district, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2020.

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 _____, 2020.

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 _____, 2020.

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 _____, 2020.

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 _____, 2020.

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 _____, 2020.

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 _____, 2020.

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 _____, 2020.

Notary Public

EXHIBIT G
ACKNOWLEDGMENT

(attached)

**ASSIGNMENT AGREEMENT
(SECOND LUMP SUM PAYMENT)**

This **ASSIGNMENT AGREEMENT (SECOND LUMP SUM PAYMENT)** (“Agreement”), effective as of _____, 202_ (“Effective Date”), by and among City of Aurora, Illinois, an Illinois home rule municipal corporation (“City”), Fox Valley Developers, LLC, an Illinois limited liability company (“Borrower”), and ETCL Copley Lender LLC, a Delaware limited liability company (“Lender”). All capitalized terms not defined in this Agreement shall have the meanings set forth in the “Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois” dated November 12, 2019, between the City and Borrower (which, as amended by the “First Amendment for the Avalon Heights Development in the City of Aurora, Illinois” dated August 10, 2020, and as amended by the “Second Amendment for the Avalon Heights Development in the City of Aurora, Illinois” dated December __, 2020, between the City, Borrower and East Aurora School District 131, is the “Redevelopment Agreement”).

WHEREAS, Lender has agreed to make that certain loan to Borrower in the original principal amount of \$[31,761,000] (“Bridge Loan”) pursuant to that certain Bridge Loan Agreement dated as of even date herewith (“Bridge Loan Agreement”), by and between Lender and Borrower; and

WHEREAS, the Bridge Loan is evidenced by a “Bridge Promissory Note” in the amount of \$[31,761,000], executed by Borrower payable to Lender; and

WHEREAS, Borrower is the owner of a historic structure located in the City of Aurora, Illinois, known as the Copley Hospital, which Borrower intends to rehabilitate into the Project, a mixed-use residential rental, community health and education campus and related amenities; and

WHEREAS, Borrower shall use the proceeds of the Bridge Loan to develop the Project; and

WHEREAS, in order to induce Lender to make the Bridge Loan, Borrower desires to assign all of its rights and obligations to receipt of the Second Lump Sum Payment to Lender, and Lender wishes to accept the assignment pursuant to the terms and conditions of this Agreement; and

WHEREAS, pursuant to Section XVI.R. of the Redevelopment Agreement, any of Borrower’s rights and obligations under the Redevelopment Agreement may only be assigned by Borrower with the prior written consent of the City; and

WHEREAS, the City is willing to consent to the assignment of Borrower’s receipt of the Second Lump Sum Payment to Lender on the terms and conditions set forth in this Agreement and on the terms and conditions set forth in the Redevelopment Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Preliminary Statements. The preliminary statements above are incorporated herein.

2. Assignment of Receipt of Second Lump Sum Payment. Borrower assigns and transfers to Lender all of Borrower's right, title, and interest in and to receive the Second Lump Sum Payment. The City accepts and consents to this assignment, and, if the City is required to pay the Second Lump Sum Payment pursuant to the Redevelopment Agreement, the City shall pay the Second Lump Sum Payment to Lender as set forth in Section 3 below. Nothing in this Agreement releases, waives or modifies any provision of the Redevelopment Agreement, except for the limited purpose of changing the recipient of the Second Lump Sum Payment, if required to be paid, from Borrower to Lender, and Borrow shall use the Second Lump Sum Payment as required by the Redevelopment Agreement.

3. Deposit of Second Lump Sum Payment. Upon the satisfaction of all the terms and conditions of the Redevelopment Agreement for payment of the Second Lump Sum Payment, the City shall deposit the Second Lump Sum Payment into the following bank account in Lender's name ("Bank Account"):

Bank Name: [_____]
Bank Location [_____]
Bank ABA#: [_____]
Bank Account Name: [ETCL COPLEY LENDER LLC]
Bank Account #: [_____]

The parties hereto agree that such deposit shall satisfy City's Second Lump Sum Payment obligations under the Redevelopment Agreement. Nothing herein shall be deemed a waiver of any terms or conditions to the Second Lump Sum Payment set forth in the Redevelopment Agreement.

4. Notices. Pursuant to Section XVI.C. of the Redevelopment Agreement, the following is added as a part to receive copies of notices of Events of Default to Developer thereunder:

ECTL Copley Lender LLC
201 St. Charles Avenue, Suite 3400
New Orleans, LA 70170
Attn: Richard Montgomery and Max Edelman

5. Term; Counterparts; Amendments. This Agreement shall remain in effect until the earlier of the payment of the Second Lump Sum Payment by the City or the termination or expiration of the Redevelopment Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. This Agreement shall not be revoked, amended or modified without the written consent of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date of this Agreement.

CITY:

CITY OF AURORA,
an Illinois home rule municipal corporation

By: _____
Richard C. Irvin
Mayor

Attest:

By: _____
Jennifer Stallings, City Clerk

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date of this Agreement.

BORROWER:

FOX VALLEY DEVELOPERS, LLC,
an Illinois limited liability company

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date of this Agreement.

LENDER:

ETCL COPLEY LENDER LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____