

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

This **FIFTH AMENDMENT TO THE REDEVELOPMENT AGREEMENT FOR THE AVALON HEIGHTS DEVELOPMENT IN THE CITY OF AURORA, ILLINOIS** ("Fifth Amendment") is made and entered into as of the ____ day of _____, 2023 ("Effective Date") by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation ("City"), Fox Valley Developers, LLC, an Illinois limited liability company ("Developer"), Jason Konrad, Russell Woerman, Michael Poulakidas, Paul Konrad and Stathis Poulakidas (together Jason Konrad, Russell Woerman, Michael Poulakidas, Paul Konrad and Stathis Poulakidas are the "Guarantors"). The City 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 Fifth Amendment, unless the context clearly requires otherwise, capitalized words and terms used in this Fifth 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"), as further amended by the "Second Amendment to the Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois," dated December 15, 2020, by and between the City, the School District, the Developer and the Guarantors ("Second Amendment"), as further amended by the "Third Amendment to the Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois," approved by the City, Developer and Guarantors on or about November 23, 2022 and subsequently by the School District, by and between the City, the School District, the Developer and the Guarantors ("Third Amendment"), and as further amended by the "Fourth Amendment to the Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois," by and between the City, the School District, the Developer and the Guarantors ("Fourth Amendment," which together with the Original Redevelopment Agreement, as amended by the First Amendment, Second Amendment and Third Amendment, are collectively the "Redevelopment Agreement"), unless otherwise defined in this Fifth Amendment.

II. 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, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth 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, the Third Amendment, the Fourth Amendment and the Fifth Amendment.”

Amendment Two – Amendments:

- A. Section VI.C.5.a. of the Redevelopment Agreement shall be amended to read in its entirety as follows:

“Upon receipt of Incremental Property Taxes, the City shall, after deductions for any payments by the City to library districts and school districts required by the TIF Act, which as of the Effective Date are in Sections 11-74.4-3(q)(7.5) and 11-74.4-3(q)(7.7) of the TIF Act, deposit Eighty Percent (80%) of the Incremental Property Taxes into the Incentive Fund, or such other percentage as set forth in this Agreement (“Deposit Percentage”), until the Developer has been paid its TIF Eligible Redevelopment Project Costs. The City shall receive Incremental Property Taxes not paid to the Developer, subject to the following:

- i. The City shall make its Twenty Percent (20%) share of the Incremental Property Taxes received by the City through December 31, 2029, available to loan to the Developer to be used solely by Developer for reimbursement of TIF Eligible Reimbursement Costs related to the Project (the “TIF Deferral Loan”) as set forth below.
- ii. The TIF Deferral Loan is a non-revolving loan of up to the maximum amount of Twenty Percent (20%) of the Incremental Property Taxes the City receives through December 31, 2029.
- iii. The TIF Deferral Loan shall be disbursed to the Developer pursuant to the procedures set forth in this Agreement related to the Ongoing Payments and shall be subject to all the same terms and conditions precedent as the Ongoing Payments, except that the TIF Deferral Loan shall be subject to the specific repayment provisions as set forth herein.

- iv. No portion of the TIF Deferral Loan shall be disbursed to the Developer until the Developer has executed a promissory note and beneficial assignment of interest on terms acceptable to the City's Chief Financial Officer and otherwise consistent with this Agreement.
- v. Developer shall pay interest to the City on the principal balance hereof outstanding from time to time at the rate of Five and One Half Percent (5.5%) per year on a compounding basis. The per diem calculation of interest shall be on the basis of a three hundred sixty (360) day year, and the per diem sum so ascertained shall be multiplied by the number of days in each respective billing period to determine the amount of interest from time to time due and owing. Interest on the TIF Deferral Loan will begin to accrue as of the date of the first disbursement of the TIF Deferral Loan.
- vi. Notwithstanding anything to the contrary herein, all payments of principal and interest under this TIF Deferral Loan are deferred until January 1, 2030. Interest that accrues prior to January 1, 2030 will accrete and be added to the outstanding principal balance. As of January 1, 2030 the outstanding principal balance and accreted interest will be straight line amortized over sixty (60) months with principal and interest payments made monthly. The first payment shall be due on February 1, 2030 and all subsequent payments shall be due on the first day of each month until the TIF Deferral Loan is repaid in full.
- vii. Without limiting the provisions hereof, in the event any installment of interest and/or principal and interest is not paid within ten (10) days of the due date thereof the undersigned promises to pay a late charge of Five Percent (5.00%) of the amount due to defray the expense incident to handling any such delayed payment or payments.
- viii. In the event that the Developer fails to make any required payment of principal, interest, late fees or any other cost due and owing the City related to the TIF Deferral Loan, or related to any other indebtedness of the Developer to the City, then the Developer shall not be entitled to any payments or reimbursements under this Agreement, until such time as all amounts owed to the City in connection with said failure to pay are paid to the City. The City is further authorized, within its sole discretion, to offset any other payment owed to the Developer under this Agreement, or any other loan

agreement, by deducting the amount owed to the City under the TIF Deferral Loan.

- ix. The Developer shall provide proof that the loan of the City's Twenty Percent (20%) Incremental Property Taxes received through December 31, 2029 is required as a condition for refinancing of the Developer's current debt on the Project in a form that is acceptable to the City's Chief Financial Officer prior to any distribution of the TIF Deferral Loan to the Developer.
- x. There shall be no distributable cash flow to the Developer until such time as the TIF Deferral 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."

- B. Section VI.C.5.d. of the Redevelopment Agreement shall be amended by striking the date of January 1, 2033, and replacing it with the date of January 1, 2030, so that said Section reads in its entirety as follows:

"Beginning on January 1, 2030, the Deposit Percentage shall be Seventy Percent (70%), unless the TIF Revenue Cap has been reached prior thereto, in which case, the Deposit Percentage shall be set at the amount in Section VI.D.5.c. below."

- C. Section VII.G. of the Redevelopment Agreement is amended to read in its entirety as follows, with the addition to said section underlined:

"Guaranty. Guarantors, jointly and severally, hereby absolutely, irrevocably and unconditionally guaranty to the benefit of the City the full and prompt payment of each and all payments required by the Developer under this Agreement in Section VI.D. and Section VI.C.5.a.(i) through x., when the same shall become due and payable in accordance with their terms (collectively, the "Guaranty"). This Guaranty shall constitute a guaranty of payment and performance when due, and not of collection. Guarantors specifically agree that, in the event of a failure by the Developer to timely pay or perform any of its obligations, the City shall have the right from time to time to proceed first and directly against Guarantors under this Guaranty, and without proceeding against the Developer or exhausting any other remedies against the Developer. Without limiting the foregoing, Guarantors agree that it shall not be necessary, and Guarantors shall not have the right, and specifically waives any right it may have, to require, as a condition of enforcing this Guaranty, that the City: (a) file suit or proceed to obtain a personal judgment against the Developer or any other person that may be liable for the obligations or any part of the obligations; (b) make any other effort to obtain payment or performance of the obligations from

Developer other than providing Developer with any notice of such nonpayment or nonperformance as may be required under the terms of the Agreement; (c) foreclose against or seek to realize upon any security for the outstanding obligations; or (d) exercise any other right or remedy that the City is or may be entitled in connection with the outstanding obligations or any security therefor or any other guarantee thereof. Notwithstanding the right of City to proceed immediately and directly against Guarantors, the City shall not be entitled to more than a single full performance of the obligations regarding any breach or non-performance thereof. Subject to the foregoing, at the City's election, which may be made in its sole judgment, the City may, following demand upon Guarantors hereunder, perform or cause to be performed the outstanding obligations on the Developer's behalf. The City shall not be obligated to undertake any of the foregoing actions, and shall not incur any liability to Guarantors, the Developer or any other person because of taking or not taking any of the foregoing actions. No such actions or inactions by the City shall release or limit the liability of Guarantors hereunder, and shall not serve as a waiver of any of the rights of the City pursuant to this Section of this Agreement. The liability of Guarantors shall be effective, and the obligations shall immediately be paid and performed, only upon any failure by Developer in the timely payment or performance of any obligation and the giving of such notice or demand, if any, to Developer as may be required under this Agreement, and the failure to cure the same. Guarantors specifically reaffirm the representations and warranties of the Developer as set forth in this Section. The obligations of Guarantors hereunder are absolute, irrevocable and unconditional and shall remain in full force and effect until the Developer's obligations have been fully discharged in accordance with their respective terms and not subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, the obligations or any other defense that Developer may have) based on any claim that Guarantors may have against the Developer, the City, or any other person. Without limiting the foregoing, the obligations of Guarantors hereunder shall not be released, discharged or in any way modified. Notwithstanding any provision to the contrary, nothing in this Section limits or waives the City's rights under this Agreement.

IV. MISCELLANEOUS

- A. **Remainder of Redevelopment Agreement.** All portions of the Redevelopment Agreement, not amended hereby, shall remain in full force and effect.

- B. **Counterparts.** This Fifth 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 Fifth Amendment.
- C. **Recording and Running with Title.** The Parties agree to record this Fifth 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 Fifth Amendment shall run with title to the land of the Property and be binding on future owners of the Property and any portion thereof.
- D. **Effective Date.** This Fifth Amendment shall be deemed dated and become effective on the day on which this Fifth Amendment is executed by the City, with said date appearing on page 1 hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Fifth 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

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 _____, 2023.

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 _____, 2023.

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 _____, 2023.

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 _____, 2023.

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 _____, 2023.

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 _____, 2023.

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 _____, 2023.

Notary Public