

**COMMERCIAL LEASE**

**RAGHUVVEER P. and ANITA R. NAYAK, LLC, SERIES  
21, a Delaware series limited liability company**

**Landlord**

**and**

**FOX VALLEY DEVELOPERS, LLC, an Illinois limited  
liability company**

**Tenant**

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**EXHIBITS**

- Exhibit A: Legal Description of Leased Premises
- Exhibit B: Court Order dated October 5, 2016
- Exhibit C: Development Agreement
- Exhibit D: Scope of Work – Demolition
- Exhibit E: Scope of Work Architectural
- Exhibit F: Scope of Work ACBM Removal
- Exhibit G. Memorandum of Lease

## LEASE

Date and Parties. This Lease, with an effective date of the \_\_\_\_ day of \_\_\_\_\_, 2018 (“this Lease”), is by and between Raghuv<sup>u</sup>eer P. and Anita R. Nayak, Series 21 LLC, a Delaware series limited liability company (“Landlord”) and Fox Valley Developers, LLC, an Illinois limited liability company (“Tenant”).

List of Exhibits. The following exhibits attached to this Lease are incorporated by reference herein and are construed to be a part hereof:

- Exhibit A: Legal Description of Leased Premises
- Exhibit B: Court Order dated October 5, 2016
- Exhibit C: Development Agreement
- Exhibit D: Scope of Work – Demolition
- Exhibit E: Scope of Work Architectural
- Exhibit F: Scope of Work ACBM Removal Contractor
- Exhibit G: Memorandum of Lease

Leased Premises Defined. Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the buildings, parking areas and green space located at real property commonly known as The Old Copley Hospital located at 502 South Lincoln Avenue, 301 Weston Avenue, and 310 Seminary Avenue, Aurora, Illinois, together with such other improvements and rights appurtenant (“Leased Premises”). The Leased Premises is legally described on Exhibit A attached hereto.

Lease Term/Minimum Rent Commencement/Rent Defined. The term of this Lease shall commence seven (7) days after the Council of the City of Aurora formally approves Tenant’s Development Agreement, a copy of which is attached at Exhibit C, and the requisite parties have all executed this Lease, the Donation Agreement by and between Landlord and Seize The Future Development Foundation, Inc. (“Foundation”), the Settlement Agreement and General Release in: *City of Aurora, an Illinois municipal corporation v. Raghuv<sup>u</sup>eer P. and Anita P. Nayak, LLC* (Cause 2014 CH 1213 pending in the Kane County Circuit Court), that certain Real Estate Transfer Agreement between Tenant and the Foundation, and the Development Agreement, which date is hereinafter referred to as the “**Lease Commencement Date.**” The obligation of Tenant to pay Minimum Rent (as defined below in this Lease), together with Tenant’s obligation to pay Real Estate Taxes (as defined in this Lease), and to maintain insurance (as outlined below in this Lease) and to comply with all of the obligations imposed by the Circuit Court of Kane County, Illinois in the Court Order dated October 5, 2016 (attached hereto at Exhibit B related to the Leased Premises) shall commence with the Lease Commencement Date.

The Lease Term shall end on the \_\_\_\_ day of \_\_\_\_\_, 2023 unless terminated sooner as provided in this Lease.

For all purposes under this Lease, "Rent" shall mean, on a collective basis, Minimum Rent (subject to the abatement hereinafter described), Tenant's Pro Rata Share of Real Estate Taxes (i.e., 100% from and after the Lease Commencement Date, which Tenant shall pay directly to the Kane County Collector without abatement), Insurance Payments (which Tenant shall pay to Landlord's or Tenant's insurance company directly as hereinafter provided), and any and all other sums or payments, of any nature whatsoever, due from Tenant to Landlord under the terms of this Lease.

Occupancy/Delivery of Possession. The parties agree that seven (7) days after the Council of the City of Aurora approves Tenant's Development Agreement (Exhibit "C") is the Lease Commencement Date. It is understood and agreed that, as of the Lease Commencement Date, and continuing throughout the Lease Term, the Tenant acting in its capacity as Tenant shall comply with, and perform, on a timely basis, all of the obligations and liabilities imposed on Tenant under the terms of this Lease, whether of a monetary or a nonmonetary nature. Tenant acknowledges and agrees that Tenant accepts the Leased Premises on an AS-IS, WHERE-IS, basis without representations or warranties of any nature or kind. Notwithstanding the foregoing, Landlord shall comply with Landlord's obligations in this Lease.

Minimum Rent. Tenant agrees to pay to Landlord as "Minimum Rent," without notice or demand or setoff of any kind, the monthly sum as set forth below, in advance, on or before the first day of each and every successive calendar month during the Lease Term; provided however, that so long as Tenant is actively and diligently pursuing lawful asbestos abatement, removal and disposal at the Leased Premises, compliant with the Asbestos NESHAP (promulgated pursuant to the federal Clean Air Act) and the Rules promulgated by the Illinois Department of Public Health incident to the Commercial and Public Building Asbestos Abatement Act, 225 ILCS 207/1 *et seq.*, all as hereafter provided, the Minimum Rent (but not the other obligations to pay real estate taxes, insurance and other items of Additional Rent described herein) shall abate and not be due and payable. Rent shall include Minimum Rent plus all other charges and fees payable by Tenant to Landlord by the terms of this Lease ("Additional Rent"). Rent to be paid to Landlord under this Lease for any period less than one (1) month shall be a prorated on a *per diem* basis. All Rent due under this Lease shall be payable to Landlord at 124 Covington Court, Oak Brook, Illinois 60523 Attention: Anita P. Nayak, or at such other place Landlord may from time to time designate in writing.

Minimum Rent Amounts. Minimum Rent shall be payable during the Lease Term as follows:

Effective Period:	Monthly	Annual
	Minimum Rent:	Minimum Rent:
First Lease Year	\$10,000.00	\$120,000.00

After the first Lease Year, Monthly and Annual Minimum Rent will increase by three percent (3%) on the first day of each succeeding Lease Year after the first Lease Year.

Security Deposit. None.

Extension Option. None.

Termination. At such time as the Foundation accepts title to the Leased Premises, this Lease shall terminate, free and clear of any claim of Landlord or Tenant as to each other.

Use. Tenant shall use the Leased Premises for the purpose of developing a residential and assisted living facility, with ancillary services associated with medicine and support and commercial facilities as approved by the City of Aurora, or for any other lawful purpose associated with residential assisted living, and shall not use or permit the Leased Premises to be used for any other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that Landlord shall not be deemed to have unreasonably withheld its consent to any changed use if such changed use would otherwise violate any terms or provisions of this Lease.

Tenant shall not do or permit anything to be done in or about the Leased Premises nor bring or keep anything therein which is not within the permitted use of the Leased Premises, or which will be the sole cause of an increase in the existing rate of any fire or other insurance policy for the buildings that are part of the Leased Premises or any material part of the building(s) contents, or be the sole cause of a cancellation of any insurance policy covering said buildings, or any part thereof, or any contents.

Notwithstanding the foregoing, Tenant shall be allowed to develop, renovate, demolish and remediate the buildings at the Leased Premises per the attached Scope of Work (Exhibit D), so long as Tenant obtains and maintains all necessary permits and governmental approvals. Tenant shall not cause or allow the Leased Premises to be used for any unlawful purpose; nor shall Tenant cause or allow any nuisance in, on or about the Leased Premises; nor shall Tenant commit or allow waste at the Leased Premises.

### Compliance with Law.

Compliance. Tenant shall not use the Leased Premises, or permit anything to be done in or about the Leased Premises, which will in any way conflict materially with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, ordinances, rules, regulations, and other governmental requirements imposed solely because of the unique nature of Tenant's use and occupancy of the Leased Premises.

Landlord and Tenant acknowledge that the Leased Premises is vacant and uninhabitable, and Landlord is not obligated to provide Tenant with structures or appurtenances that are compliant with the Americans With Disabilities Act, 42 U.S.C §12101 *et seq.* and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA"). In the event that the ADA is required, Landlord and Tenant acknowledge that the ADA establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Leased Premises depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility," (2) whether such requirements are "readily achievable," and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Tenant shall be responsible for ADA Title III compliance for the entire Leased Premises, (b) Tenant shall be responsible for ADA Title III compliance in the Leased Premises, including any Tenant's Work or other leasehold improvements to be performed in the Leased Premises under or in connection with this Lease, (c) Tenant shall perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by alterations in the Leased Premises, and (d) Tenant shall perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the common areas necessitated by the building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of Tenant's use of the Leased Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

No Covenant to Operate. Throughout the entire Lease Term, Tenant may conduct and carry on Tenant's business in the Leased Premises. During the contemplated development, construction and renovation and all subsequent operations, Tenant shall provide the Leased Premises with sufficient personnel to provide adequate security as required by the City of Aurora (pursuant to the Court Order at Exhibit B) and to secure the Leased Premises free from vandals and trespassers and to care for the patronage or use of the Leased Premises by those authorized to be present at the Leased Premises, and to conduct Tenant's development, construction, renovation and business in accordance with sound management practices and according to the requirements imposed by federal, state



and local authorities, laws, permits and rules, including those laws and regulations imposed by any taxing authority for which tax credits and deductions are available.

Real Estate Tax Reimbursement. Unless otherwise agreed by the parties in writing and without abatement, as of the Lease Commencement Date, Tenant shall pay all real property taxes to the Kane County Collector assessed against the Leased Premises accrued from and after that date, when due, for the term of this Lease to the date this Lease terminates.

Landlord Repair Responsibility.

None. Tenant shall be responsible, at Tenant's sole cost, risk and expense, to develop the Leased Premises according to the standards and plan approved by the City of Aurora and shall perform all repairs, replacements or improvements of any kind deemed necessary or required, including (without limitation) the removal of asbestos-containing building materials, in or to the Leased Premises, or any equipment, facilities or fixtures contained therein, and to board up and make the buildings weather tight, all of which are the responsibility of Tenant; provided that the term "repairs" shall not be construed to imply that Tenant has any obligation to install a system or operation that is not in service or in operation at the Leased Premises as of the Lease Commencement Date, but the term shall apply to all structural components now or hereafter existing at the Leased Premises, as well as any system or operations placed in service or operation at the Leased Premises after the Lease Commencement Date as well as any system or operation necessary to accomplish the development of the Leased Premises according to the development plan approval by the City. In the event that Landlord chooses to make any repairs, replacements or improvements of any kind, including (without limitation) the removal of asbestos-containing building materials, in or to the Leased Premises or any equipment, facilities or fixtures contained therein, Tenant shall pay the charges incurred by Landlord, immediately and upon demand.

Tenant Repair Responsibility. Tenant shall, at Tenant's sole cost, risk and expense, develop, renovate, partially demolish and repair the Leased Premises according to the terms described in the Development Agreement, Scope of Work – Demolition, Scope of Work – Architectural, Scope of Work –ACBM Removal (Exhibits C, D, E, &F attached hereto) and to board up and make the buildings weather tight. Tenant shall, at Tenant's sole cost, risk and expense, maintain and repair the Leased Premises (which term, "repair," shall be construed as described in the preceding paragraph), and prevent waste and insure the safety of the workers at the Leased Premises and the public in the vicinity of the Leased Premises. Tenant shall properly and lawfully remove and lawfully dispose of all ACBM in or about the Leased Premises to the satisfaction of all federal, state, and local authorities (including, without limitation, the City of Aurora) and Tenant shall pay all fines, fees (including

attorneys' fees and experts' fees) incurred or assessed after the Lease Commencement Date associated with removing and disposing of the ACBM, and those fees and costs incurred or assessed after the Lease Commencement Date by any person or entity (including federal, state, local authorities or individuals) seeking to enforce federal, state or local laws, regulations or ordinance as a private attorney general as to the Tenant's activities. The parties agree that Landlord shall be responsible for such fees, fines and costs incurred or assessed for Landlord's activities at any time and for matters unrelated to the Tenant's partial demolition, remediation, removing and disposing of the ACBM.

In the event that the Foundation refuses to accept title to the Leased Premises or Tenant abandons the project involved with the donation of the Leased Premises to the Foundation, Tenant shall, upon the expiration or sooner termination of this Lease, surrender the Leased Premises to Landlord, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant, excepted.

Tenant Alterations. Tenant shall, during the Lease Term, make alterations, additions, or improvements to the Leased Premises (hereinafter collectively referred to as "Alterations") necessary to develop the Leased Premises as described herein, to remediate the ACBM as described in Exhibits C, D, E and F, and to board up and make the buildings weather tight, without Landlord's prior written consent, but only with and according to the consent and approval of the City of Aurora and otherwise in compliance with all federal, state and local laws, rules and regulations and the attached exhibits.

Landlord Alterations & Additions. For so long as Tenant is not in default hereunder or beyond any applicable cure period, Landlord shall not make or propose any changes, alterations or additions to, or subdivisions of, the Leased Premises, including the parking lot and other areas, including, but not limited to, construction of additional buildings and improvements, or to change the dimensions of the building without Tenant's consent, which consent shall be provided, if at all, in Tenant's sole discretion. Without limiting the foregoing, and in addition thereto, Landlord may not propose or construct other buildings, structures, kiosks or improvements, including, but not limited to, surface, elevated or double-deck parking facilities, in the Leased Premises and temporary scaffolds and other aids to construction; whether or not the items referenced above in this Paragraph and this sentence shall not materially and adversely interfere with the visibility of, and normal business operation in, the Leased Premises, parking adjacent to the Leased Premises or ingress to or egress from the Leased Premises.

#### Services.

Utilities. Tenant shall pay all water, gas, electric, heat, light, power, sewer charges, telephone service and all other services and utilities supplied to the Leased Premises subsequent to the Lease Commencement Date, together with any taxes thereon. All such

services and utilities supplied to the Lease Premises shall be separately metered. Tenant shall pay all electricity and related charges for its exterior signs, if any. The parties acknowledge and agree that there is no HVAC services at the Leased Premises, and Landlord is under no obligation to provide HVAC service to Tenant.

Pest Extermination. As directed by responsible governmental authorities, Tenant shall address and pay for the removal or control of pests as required at the Leased Premises.

Security. As directed by the City of Aurora, Tenant shall provide and pay a security service at the Leased Premises, and shall allow only Landlord's and Tenant's invitees access to the Leased Premises, and Tenant shall deny access to vagrants, trespassers, vandals and uninvited persons to the Leased Premises as required by the City of Aurora.

Landscaping. Tenant, at Tenant's sole expense, shall cut the grass and maintain and replace, if necessary, all landscaping at the Leased Premises in a manner consistent with the requirements of the City of Aurora.

Snow Removal. Tenant, at Tenant's sole expense, shall provide snow removal services for all sidewalks and parking areas of the Leased Premises.

Liens. Neither Landlord nor Tenant, shall cause, allow or permit any mechanic's lien to be recorded against the Leased Premises by reason of, or due to, or as a result of, any work, labor, services, or materials performed at, or furnished to, the Leased Premises, or to anyone involved with the Leased Premises through or under either Landlord or Tenant, except for mechanics' liens, if any, related to the scope of work described in Exhibits C, D, E and F, which liens may be available only if this Lease is terminated, and subject to Landlord's claims, if any, against Tenant. In the event that a mechanics' lien is recorded against the Leased Premises due to Tenant's work as described herein, then before the Closing Date conveying the Leased Premises to the Foundation, Tenant shall obtain a release thereof, or provide adequate assurances to the Title Company so that Landlord may close on the donation to the Foundation, free and clear of said mechanics' liens.

If any other mechanic's lien shall at any time be recorded, the responsible party who is alleged responsible by the claimant shall immediately cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise; provided, however, that either Landlord or Tenant shall have the right to contest any and all such liens provided security which is satisfactory to the other party, in its sole discretion, is deposited with a Title Company or other agreed upon third party as escrowee. Subject to the immediately preceding sentence, in the event that the party with the responsibility of funding the escrow fails to cause any such lien for charges incurred to be discharged before judgment or sale thereunder, then, in addition to any other right or remedy of the party, that party may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding or other proceeding deemed

appropriate by the aggrieved party, and the amount so paid, together with all costs and expenses (including, but not limited to, reasonable attorney's fees), incurred in procuring the discharge of such lien, shall immediately become due and payable to the party who incurred those costs by the other party.

Further to protect Tenant's interest in the Leased Premises and Tenant's rights under this Lease, Landlord shall not encumber the Leased Premises with a mortgage or other security instrument during the Term of this Lease without Tenant's prior written consent. If Landlord encumbers the Leased Premises with a mortgage or other security instrument without the previous written consent of Tenant, and if such mortgage or other security instrument does not specifically provide that Tenant's rights as herein described are paramount, the presence of any such mortgage or security interest shall constitute Landlord's breach hereunder and entitle Tenant to damages and to reimbursement of all development, demolition, remediation and renovation expenses actually incurred by Tenant. Tenant may, but is not required to, record a Memorandum of this Lease using the form attached hereto at Exhibit G. In addition, in the event that Landlord encumbers the Leased Premises in violation of the terms and conditions of this paragraph, Tenant may, but is not obligated to, record a mechanic's lien in a manner provided by law reflecting completed improvements it has made and/or installed at the Leased Premises.

Hold Harmless - Indemnity. As otherwise stated herein, this Lease shall only be deemed valid and enforceable at such time as the operative documents incident to the development of the Leased Premises are signed and approved by the City Council of the City of Aurora, Illinois. By way of description, those operative documents only include this Lease, the Donation Agreement by and between Landlord and the Foundation, the Settlement Agreement and General Release in: *City of Aurora, an Illinois municipal corporation v. Raghuvver P. and Anita P. Nayak, LLC* (Cause 2014 CH 1213 pending in the Kane County Circuit Court), that certain Real Estate Transfer Agreement between Tenant and the Foundation and the Development Agreement.

Until such operative documents are signed and approved by the City of Aurora as aforesaid, neither Landlord nor Tenant shall have any obligation or responsibility to the other party pursuant to this Lease. At such time as the foregoing documents are signed and approved by the City of Aurora, Tenant shall, and does hereby agree to, indemnify, protect, defend and hold harmless Landlord, Landlord's successors, assigns, beneficiaries, partners, managers, members, agents, transferees, and employees against and from any and all claims, damages, liabilities, obligations, losses, causes of action, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) suffered or incurred by any or all of the indemnified parties and arising from, or as a result of, (a) Tenant's actions, negligence or the actions and negligence of any officer, agent, employee, contractor, subcontractor, guest, subtenant, or invitee of Tenant involved with, or in the

vicinity of the renovation, demolition, remediation, construction, use and occupancy of the Leased Premises which accrue after the Lease Commencement Date, (b) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease.

Tenant upon notice from an indemnified party, shall defend the same at Tenant's expense with counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Leased Premises from any cause other than Landlord's negligence or intentional misconduct that accrue from and after the Lease Commencement Date. Tenant and Developer shall give prompt notice to Landlord in case of casualty or accidents in or about the Leased Premises.

Insurance to be Maintained by Tenant. Tenant may, at its sole cost and expense, become an additional insured under Landlord's existing policies (with Landlord's and the Insurer's consent) and Tenant shall pay the premiums for the period of time commencing subsequent to the Lease Commencement Date when due or otherwise reimburse the Landlord, or at its sole cost and expense, and at all times during the Term (and any extensions thereof) Tenant may obtain and pay for and maintain in full force and effect the following insurance policy or policies:

Liability Coverage. Commercial General Public Liability to comply with any conditions of this Lease and covering Tenant against any claims arising out of liability for bodily injury, death, personal injury and property damage occurring in and about the Leased Premises and otherwise resulting from any acts and operations of Tenant, its agents, contractors, subcontractors, engineers, architects, design professionals, subtenants and employees, with limits of not less than a total combined single limit of \$1,000,000.00 per occurrence and \$2,000,000.00 annual general aggregate. Such insurance shall include: (i) "occurrence" rather than "claims made" policy forms; (ii) all insurable liability assumed by the Tenant under the terms of this Lease; (iii) premises medical expenses in an amount not less than \$25,000.00 per person, per accident; (iv) the Landlord and any other parties designated by Landlord (including, but not limited to, its beneficiary, its general partners, its managing agent, owner, and its mortgagees) shall be designated as additional insured(s); and (v) severability of insured parties.

Contractor's Coverage. Notwithstanding the foregoing, and in addition thereto, Tenant shall mandate that all contractors and subcontractors retained to do the Work identified at or near the Leased Premises identified in the Exhibits shall procure and maintain: (1) commercial general public liability insurance, (2) contractor's liability coverage, and (3) Workers' Compensation Coverage. Workers' Compensation in the state in which the Leased Premises and any other operations of the Tenant located in any other

state in which the Tenant or its contractors or subcontractors may be subject to any statutory or other liability arising in any manner whatsoever out of the actual or alleged employment of others. The total limits of the employer's liability coverage shall be not less than \$1,000,000 (accident)/\$1,000,000 (person)/\$1,000,000 (policy); and (4) any such other types, coverages and amounts of insurance (including increases to the foregoing) as may be reasonably required by Landlord.

Form of Policies. All insurance policies procured by Tenant or contractor under this Paragraph shall: (i) be in the name of Landlord and Tenant, and shall name Landlord as an Insured as well as any other party with an insurable interest in the Leased Premises approved by Tenant, with Landlord as an Insured and loss payee; (ii) be issued by companies licensed to do business in the State of Illinois and acceptable to Landlord rated by Best's Insurance Reports not less than A/X; (iii) not be subject to cancellation or material change or non-renewal without endeavoring to provide prior written notice to Landlord and any other parties designated by Landlord to be loss payee(s) or additional insured(s) under the insurance policies required from Tenant, or to receive such notices; and (iv) except as otherwise provided herein, to be deemed to be primary and noncontributory insurance in relation to any other insurance maintained by Landlord. Tenant shall pay all deductibles under all such insurance policies. Tenant shall require its contractors, subcontractors, engineers, architects and subtenants to carry the insurance required herein and evidence of such coverage must be submitted to Landlord upon Landlord's reasonable request. Copies of all insurance certificates required pursuant to this Paragraph (in form and substance acceptable to Landlord), shall be delivered to Landlord prior to the Lease Commencement Date and annually thereafter as reasonably requested by Landlord. If Tenant fails to submit such policies or certificates to Landlord within the specified time described in the notice to Tenant, or otherwise fails to obtain and maintain insurance coverages in accordance with this Paragraph, then Landlord, at Landlord's sole option, may, but shall not be obligated to, procure such insurance on behalf of, and at the reasonable expense of, the Tenant, and if Landlord exercises such right and expends any funds to obtain such insurance, Tenant shall reimburse Landlord for such amounts upon demand, it being understood that any such sums for which Tenant is required to reimburse Landlord, which shall constitute Additional Rent under this Lease. Such a failure to reimburse Landlord in thirty (30) days after notice from Landlord shall constitute a default by Tenant hereunder, and such default shall not be cured by Landlord's election to procure insurance on Tenant's behalf. Compliance in whole or in part by the Tenant with any requirement of this Paragraph shall not be deemed to limit, in any way or to any extent, the liabilities or obligations of the Tenant to the Landlord under the specific terms of this Lease.

Subrogation. Tenant acknowledges, for all purposes, that Landlord has never occupied the Leased Premises or any part thereof at any time, and that Landlord has no

knowledge of any condition in, around or associated in any way with the Leased Premises, its structures, the infrastructures, component parts, equipment or utilities. Tenant, for itself and for those claiming by, through or under Tenant, irrevocably waives any claim against Landlord related in any way to the conditions at the Leased Premises, the habitability of the Leased Premises, and Tenant's rights to recover anything from Landlord for loss related to the Leased Premises, its structures, the infrastructures, component parts, equipment or utilities, and any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the Tenant.

Casualty/Restoration. In the event the Leased Premises are partially damaged by fire, explosion or any other casualty not caused or attributable to Tenant (or the actions of any contractor or subcontractor), then Tenant shall repair the damage within a reasonable time, and shall commence repair(s) as soon as practicable after the occurrence of the casualty. In the event of any such partial damage by fire, explosion or any other casualty is not repaired as hereinabove provided, Landlord may, but is not obligated to, terminate this Lease, and shall receive and retain the insurance proceeds payable for such casualty. For purposes of complying with the foregoing, Tenant hereby assigns to Landlord, all rights to any such claim and proceeds. For purposes of this Lease, "partial" shall mean 50% or less of the current floor space of the Leased Premises.

In addition, in the event of such casualty and partial loss as defined above, Tenant shall promptly commence and diligently complete, at Tenant's expense or with the use of insurance proceeds, repair or replace the structures at the Leased Premises damaged by such casualty or loss, as well repair or replace its equipment, all contractors' and subcontractors' equipment, and continue with the development, demolition, renovation and remediation purposes expressed in this Lease.

Eminent Domain. In the event that any portion of the Leased Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, then the Minimum Rent thereafter to be paid shall be reduced in proportion to the area of the Leased Premises so taken and shall become effective on the date possession is delivered pursuant to said taking. In the event of any taking or appropriation in eminent domain, Landlord or Tenant may pursue claim(s) for their respective interests, and each shall be entitled to an award, judgment or settlement in direct proportion to their respective interests in the Leased Premises at that time, but only as their respective interests appear and which are decided by the court of competent jurisdiction wherein the condemnation action was initiated. Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term. Tenant shall have the right to assert a claim for the value of the improvements it made, constructed and installed at the Leased Premises against the Condemnor, and at no time shall Tenant have a claim for the value of the

Leased Premises against the Condemnor until this Lease is terminated by acceptance of the Leased Premises by the Foundation as specifically provided herein.

Assignment, Subletting and Ownership. Tenant may assign this Lease or sublet all or any part of the Leased Premises, subject to the consent of Landlord (except as provided for sublets in the second paragraph of this Paragraph), which consent may be withheld, conditioned or delayed and based only on conditions necessary to further the proposed development of the Leased Premises, and provided that Tenant remains bound to comply with the Terms hereof. Tenant shall have the right to assign this Lease and sublet the Premises to any affiliate of Tenant, successor by merger or consolidation, or acquirer of substantially all of the assets of Tenant (the foregoing hereinafter known as an "Affiliate"), so long as Tenant remains obligated under this Lease and the assignee agrees to be bound hereunder.

In the event of a sublease under this provision, Landlord shall be entitled to the Rent otherwise payable under this Lease.

In the event that Tenant seeks to sublet all or a portion of the Leased Premises and to obtain a release or partial release of its obligations hereunder due Landlord for the proposed sublease, then Tenant must seek Landlord's prior approval and consent, which shall be granted or denied in Landlord's full discretion. If Tenant desires the consent of Landlord to an assignment or subletting for which Tenant shall be excused or substituted hereunder, then Tenant shall submit to Landlord, at least thirty (30) days prior to the proposed effective date of the assignment or sublease, a written notice which includes:

All documentation then available related to the proposed sublease or assignment, which terms shall include (and not be limited to) consent to continued performance of this Lease and the sub-tenant's ability to pay therefor; and

Sufficient information to permit Landlord to determine the identity and character of the proposed subtenant or assignee and the financial condition of the proposed assignee or subtenant.

Landlord agrees to notify Tenant as to whether Landlord consents to such assignment or sublease within 10 days after receipt by Landlord of all documents required pursuant to (i) and (ii) above; provided, however, that copies of the final executed documentation must be supplied to Landlord by Tenant at least ten (10) business days prior to the effective date of such assignment or sublease and Landlord shall have an additional ten (10) business days after receipt of such revised documents, or the remainder of the original thirty (30) day period, whichever is longer, to either approve or disapprove of such assignment or sublease. If the terms of the proposed sublease or assignment change in any



material respect from the terms contained in the documents previously delivered to Landlord pursuant to this subparagraph, or the identity of the subtenant or assignee changes, then Tenant shall resubmit the documentation to Landlord indicating the changes and Landlord shall have an additional thirty (30) days to either approve or disapprove of such assignment or sublease.

If Landlord consents to any assignment of this Lease or a sublease of the Leased Premises under this provision involving a requested release or partial release from Landlord to Tenant, then as a condition of Landlord's consent, Tenant shall pay to Landlord, in addition to the charges otherwise described in this Lease, any attorneys' fees and expenses incurred by Landlord in connection with such assignment or sublease. Further, Tenant shall deliver to Landlord a counterpart of the fully executed transfer document and Landlord's standard form of consent to assignment or sublease executed by Tenant and the transferee. In no event shall Landlord be liable for any costs incurred by Tenant in relation to such transfer, including but not limited to tenant improvement allowances, broker's commissions, or repair costs. Landlord reserves the right to require lien waivers from any related parties with respect to any transfer as a condition of Landlord's consent.

Tenant represents that it is an Illinois limited liability company, wholly owned by South Lincoln Avenue Development Group, LLC, an Illinois limited liability company, and that both limited liability companies are in good standing, and authorized to perform as described herein and in the State of Illinois, and that Tenant is authorized to perform hereunder. Tenant further represents that Tenant has no other interest in any other real estate other than the Leased Premises and South Lincoln Avenue Development Group LLC owns no other real estate and has no other subsidiaries or affiliates. The withdrawal or change, whether voluntary, involuntary or by operation of law, of partners or members owning directly or indirectly a controlling interest in Tenant or South Lincoln Avenue Development Group, LLC shall be deemed an assignment of this Lease and subject to the provisions requiring the consent or approval of the Landlord. Any dissolution, merger, consolidation or other reorganization of Tenant or South Lincoln Avenue Development Group, LLC, or the sale, transfer or redemption of a direct or indirect controlling interest in the membership interests of Tenant or South Lincoln Avenue Development Group, LLC shall be deemed a voluntary assignment of this Lease and subject to the provisions requiring the consent or approval of Landlord.

Access to Leased Premises. Landlord, Landlord's mortgagee, Landlord's beneficiaries and their respective partners, agents and employees will be permitted to enter the Leased Premises at reasonable times and so long as the access does not interfere with Tenant's operations, for the purpose of inspecting same, or making repairs, additions or alterations allowed hereunder. Tenant agrees that any such entry shall not constitute eviction of Tenant in whole or in part and Rent shall not abate to any extent.

Fixtures/Surrender of Leased Premises. At the termination or expiration of this Lease other than termination by delivery and acceptance of title to the Leased Premises by Landlord to the Foundation, Tenant shall, at their sole cost and expense, remove Tenant's equipment and effects (and those of their subcontractor's) that are not permanently affixed to the Leased Premises and repair any damage caused by such removal. All fixtures, furnishings, floor coverings and equipment permanently affixed to the Leased Premises shall thereupon become the property of Landlord, and Tenant shall peaceably yield up the Leased Premises and all alterations and additions thereto to Landlord, in good order, repair and condition, reasonable wear and tear and damage by fire or other casualty not caused or allowed by Tenant excepted. Any cost incurred by Landlord for removal and/or repair of such alterations, fixtures, furnishings, floor coverings and equipment will be charged to Tenant, and said obligation shall survive the expiration of the Lease Term. In the event that this Lease is terminated by delivery and acceptance of title to the Leased Premises by Landlord to the Foundation, then Tenant shall comply with the terms and conditions imposed by the Foundation and Landlord and those claiming by, through or under Landlord and the Foundation, and Landlord shall be forever excused of each and every obligation described in this Lease. Provided that Landlord has complied with the terms of this Lease and has provided the requisite investment to South Lincoln Avenue Development Group, LLC, Landlord's liability, if any, to Tenant shall not exceed \$1,600,000.00.

Holdover. In the event that this Lease is not terminated by delivery and acceptance of title to the Leased Premises from Landlord to the Foundation, and this Lease proceeds for the full term identified above, then on the last day of the Term, or upon any earlier termination of this Lease for any other reason not including delivery and acceptance of title to the Leased Premises to the Foundation, Tenant shall quit and surrender the Leased Premises to Landlord and in good order, condition and repair, except for ordinary wear and tear, and Tenant shall remove all of the Tenant's and its subcontractor's personal property therefrom, except as otherwise expressly provided in this Lease.

If Tenant remains in possession of the Leased Premises after the Expiration Date or after earlier termination this Lease, and this Lease is otherwise in effect (a) Tenant shall be deemed a tenant at will, and (b) Tenant shall pay one hundred twenty-five percent (125%) of the Minimum Rent last prevailing hereunder, and also shall continue to pay all Additional Rent and all reasonable costs, expense and damages sustained by Landlord by reason of such remaining in possession after the expiration or termination of this Lease; (c) there shall be no renewal or extension of this Lease by operation of law, and (d) the tenancy at will may be terminated upon thirty (30) days' notice from Landlord. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

Tenant Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

If Tenant abandons or vacates the Leased Premises for more than 60 (sixty) days and fails to pay Rent hereunder; or

If Tenant fails to pay any Rent or any other charges required to be paid by Tenant within ten (10) days after the date due under this Lease; provided, however, to avoid any doubt, Rent is due and payable without demand on the first day of each calendar month during the Term and the ten (10) day period referred to immediately above shall apply to the payment of Rent only one time during any 12-month period during the Term; or

If Tenant fails to promptly and fully perform any covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of any such default is such that the same cannot be cured within thirty (30) days, Tenant shall have such additional period of time as may be reasonably necessary to cure such default provided that Tenant commences to cure said default within the thirty (30) day period and proceeds diligently thereafter to complete such cure, and provided further that such default is cured within one hundred and twenty (120) days from the date of Landlord's notice to Tenant, or

If a writ of attachment or execution is levied on this Lease or on any of Tenant's or Property that is not vacated or dismissed within forty-five (45) days from the issuance thereof; or

If Tenant or South Lincoln Avenue Development Group, LLC makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or

If Tenant or South Lincoln Avenue Development Group LLC files a voluntary petition for relief or if a petition is filed against Tenant or South Lincoln Avenue Development Group, LLC in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within sixty (60) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or South Lincoln Avenue Development Group LLC or any substantial part of its/their property and such jurisdiction, custody or control remains in force un-relinquished, un-stayed or un-terminated for a period of sixty (60) days; or

If in any proceeding or action which Tenant or South Lincoln Avenue Development Group LLC is a party, a Trustee, or Receiver, Agent or Custodian is appointed to take charge of the Leased Premises or Tenant's or South Lincoln Avenue Development Group LLC's Property (or has the authority to do so) for the purpose of enforcing a lien created by Tenant against the Leased Premises or Tenant's or South Lincoln Avenue Development Group LLC's Property; or

If Tenant shall materially falsify any report required to be furnished to Landlord under the terms of this Lease.

Landlord's Remedies. In the event of Tenant's default hereunder, then in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind, to do the following:

Remedies. In the event of any breach of this Lease by Tenant, Landlord, may, in addition to all other rights and remedies provided in this Lease, at law or in equity: (i) terminate this Lease and Tenant's right of possession of the Leased Premises, and recover all damages to which Landlord is entitled hereunder, specifically including, without limitation, Rent for the balance of the Term subject to Landlord's duty to re-let the Leased Premises and mitigate the amount of Tenant's rental payments, and all Landlord's expenses of re-letting (including repairs, alterations, improvements, additions, decorations, legal fees and brokerage commissions) or (ii) terminate Tenant's right of possession of the Leased Premises without terminating this Lease; provided, however, that Landlord shall use its reasonable efforts, whether Landlord elects to proceed under Subparagraphs (i) or (ii) above, to re-let the Leased Premises, or any part thereof for the account of Tenant in order to mitigate Landlord's damages for Rent and term and upon such terms and conditions as are acceptable to Landlord.

Additional Restrictions. With respect to provisions of 735 ILCS 5/9-213.1 (or any successor provision thereto) which requires that a landlord take reasonable measures to mitigate the damages recoverable against a defaulting tenant, Tenant agrees that Landlord shall have no obligation to re-let the Leased Premises to any potential tenant who Landlord could reasonably reject as a Transferee above. Subject to the foregoing, Landlord shall use commercially reasonable efforts to mitigate its damages in the event of a default by Tenant under this Lease.

Default by Landlord and Remedies of Tenant. It shall be a default by Landlord in the event Landlord fails to perform or observe any material term, condition, covenant or obligation required to be performed or observed by it under this Lease within thirty (30) days (or such shorter period as provided for in such instance in this Lease) after Tenant has provided Landlord with written notice of such failure. If Landlord does not cure such failure to perform or observe any term, condition, covenant or obligation required to be performed or observed by it within such period, Tenant shall have the right to cure such failure, and within thirty (30) days after demand therefor by Tenant, Landlord shall reimburse Tenant for the reasonable costs incurred by Tenant in connection with such cure plus interest at the per annum rate of five percent (5%) from the date such funds were expended by Tenant.

Notwithstanding the foregoing and without waiving Tenant's rights under the other provisions of this Lease, Tenant may at its option, sue for injunctive relief or sue for damages. In no event shall Tenant be entitled to take any self-help or exercise any other

remedy available under law or at equity in the event of a default by Landlord under the provisions of this Lease.

Landlord's intentional encumbrance of the Leased Premises, or any part thereof, shall constitute a Landlord's breach hereunder and entitle Tenant to damages and payment for all renovation, demolition and remediation cost incurred by Tenant to date. Tenant shall be allowed, at its sole cost and expense, to record a Memorandum of Lease with the Kane County Recorder of Deeds, and may, but is not obligated to, record any available mechanics' lien rights; provided, however, in the event of any such encumbrance, Landlord shall have thirty (30) days to remove or insure over the encumbrance to Tenant's reasonable satisfaction following receipt of written notice from Tenant requesting the removal of any such encumbrance. In the event that Tenant defaults hereunder, or under the Development Agreement with the City of Aurora, Tenant shall release Landlord hereunder and each shall sign a recordable instrument terminating this Lease to Landlord's reasonable satisfaction.

Waiver. The waiver by Landlord or Tenant of any term, covenant or condition herein contained must be in writing and shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord or payment of Rent by Tenant shall not be deemed to be a waiver of any preceding default by Landlord or Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rental so accepted, regardless of Landlord's or Tenant's knowledge of such preceding default at the time of the acceptance or payment of such Rent.

Joint Obligation. If, at any time, there is more than one Tenant obligated hereunder, the obligations hereunder imposed shall be joint and several as to all of them. The word "Tenant" shall be deemed and taken to mean Tenant and each and every person or party mentioned as a Tenant herein; and if there shall be more than one Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all Tenants.

Marginal Headings. The captions, margin headings, paragraph numbers, and index, if any, appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of this Lease nor in any way affect this Lease.

Time of Essence. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor, and all provisions herein and all provisions relating thereto, shall be strictly construed.

Successors and Assigns. All of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. No third party, other than such heirs, legal representatives, successors and assigns, shall be entitled to enforce any or all of the provisions of this Lease or shall have any rights hereunder whatsoever.

Recording. A Memorandum of this Lease may be recorded by Tenant, at Tenant's sole cost and expense; provided that Tenant shall execute a release in favor of Landlord in recordable form, which may be recorded by Landlord, at Landlord's expense upon termination of this Lease as herein provided.

Quiet Enjoyment and Non-Disturbance. Upon Tenant paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Leased Premises for the entire Lease Term hereof, free of any claim of Landlord or any Lender, and subject to all the provisions of this Lease. In consideration of the terms, covenants and conditions herein described, Tenant shall be entitled to use the Leased Premises for the uses and purposes hereinabove stated.

Late Charges. Tenant hereby acknowledge that late payment by Tenant to Landlord of Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges that may be imposed upon Landlord by terms of any mortgage or trust deed covering the Leased Premises. Accordingly, if any installment of Rent or any sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after said amount is due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of only such overdue amount, plus attorneys' fees incurred by reason of Tenant's failure to pay Rent and other charges when due hereunder; provided, however, that Tenant shall not be obligated to pay the late charge the first time during any consecutive twelve (12) month period unless Tenant shall fail to pay the sums due within five (5) days after its receipt of written notice from Landlord as to the delinquency. The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost that Landlord will incur by reason of a late payment by Tenant. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder; provided, however, that the payment of the past due amount and the late charge will constitute a cure hereunder and shall not be construed as Tenant's default.

Prior Agreements/Amendments. This Lease, and the exhibits, contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this

Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

Inability to Perform. In the event that any party hereto shall be delayed or hindered in or prevented from the performance of any act or obligation required hereunder by reason of strikes, lockouts, inability to obtain materials, floods, earthquakes, acts of God, riots, insurrections, archaeological findings, court orders, delays in obtaining governmental approvals, and other events beyond Landlord's or Tenant's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act or obligation shall be extended for a period equivalent to the period of such delay; except that Landlord's or Tenant's lack of funds or inability to secure financing necessary to meet such party's obligations under this Lease shall not be construed to be a cause beyond the affected party's reasonable control. Both parties shall use commercially reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

Attorneys' Fees. In the event of dispute between Landlord or Tenant concerning the enforcement of any term of this Lease, the prevailing party shall be entitled to reimbursement of its reasonable attorneys' fees, costs, expenses and expert witness fees incurred in connection therewith.

Conveyance of Leased Premises to Seize the Future Development Foundation, Inc. In the event that Landlord conveys title to the Leased Premises to the Foundation and the Foundation accepts the conveyance, this Lease shall terminate immediately, and neither Landlord nor Tenant shall have any further obligation to the other hereunder, except the indemnity obligations described herein shall survive the Lease termination. Upon such conveyance, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the conveyance, and Tenant shall release Landlord from all claims related to any obligation described in this Lease.

Subordination Notice to Superior Lessors and Mortgagees, Non-Disturbance and Attornment.

Subordination of Lease. Provided that, as long as Tenant is not in default under this Lease, none of Tenant's rights under this Lease shall be disturbed by Landlord, or by any lender or any individual or entity claiming by, through or under the Landlord.

Notice in the Event of Default. If any act or omission of Landlord would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate this Lease or to claim a partial or total eviction, Tenant shall not exercise such right (a) until it has given, by certified mail or actual delivery, written notice of such act or omission to Landlord, and (b) until a thirty-day period for remedying such act or omission shall have elapsed following the giving of such notice; provided, however, that said 30- day cure period may be extended in the event that the act, or omission cannot, by its nature, be cured within thirty (30) days and Landlord is diligently proceeding to cure said default; provided that if such default gives rise to an emergency, then such default shall be cured by Landlord as soon as may be practicable.

Tenant's Personal Property. Landlord agrees that, by these terms, promptly (but no later than fifteen (15) days following) Tenant's request, Landlord shall subordinate its security interest provided by this Lease, in Tenant's personal property to the lien of Tenant's equipment lender or any creditor of Tenant who finances, or provides additional financing in the future to enable Tenant to purchase and/or obtain additional furniture, fixtures, equipment and accessions for use upon the Leased Premises, and any proceeds therefrom. In no event shall such agreement require Landlord to permit Tenant's equipment lender to store any such personal property in the Leased Premises after the termination of this Lease (by lapse of time, or otherwise) unless Landlord is being paid, in full, all Rent payable under this Lease.

Notices. Notices and demands required or permitted to be given hereunder shall be given either by (i) certified mail, return receipt requested, (ii) personal or delivery or (iii) delivery by reputable overnight courier (such as Federal Express), so long as the notice is properly addressed as follows:

**Landlord:**

Raghuveer P. and Anita R. Nayak, LLC, Series 21,  
a Delaware series limited liability company  
124 Covington Court  
Oak Brook, Illinois 60523  
Attention: Ms. Anita R. Nayak

**with a copy to:**

Greensfelder, Hemker & Gale P.C.  
200 West Madison Street, Suite 3300



Chicago, Illinois 60606  
Attention: Mr. William J. Anaya

**Tenant:**

Fox Valley Developers, LLC,  
an Illinois limited liability company  
346 North Lake Street  
Aurora, Illinois 60506  
Attention: Mr. Michael Poulakidas

**with a copy to:**

Nealis & Garrow, P.C.  
510 South Batavia Avenue  
Batavia, Illinois 60510  
Attention: Mr. Alan Garrow

or at such other address that either party may designate by written notice to the other party. Notices and demands shall be deemed to have been given when delivered if personally delivered, or the following business day after deposit with a reputable overnight courier for next business day delivery, or the day of mailing by certified mail, return receipt requested.

Estoppel Certificate. At any time and from time to time, Tenant agrees, within ten (10) business days after receipt by Tenant of a written notice from Landlord, to execute, acknowledge and deliver to Landlord and/or Landlord's mortgagee and/or any prospective purchaser, if requested, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the amount of Minimum Rent and other charges and the date to which said Minimum Rent and other charges have been paid, and such other terms as Landlord and/or Landlord's mortgagee and/or the prospective purchaser may require.

Commissions. Landlord and Tenant represent that it has had no dealings with any broker or agent in connection with this Lease and no commission is due any broker or agent for the execution of this Lease. Tenant hereby indemnifies, protects, defends and holds Landlord, its members, employees, agents, beneficiaries and lenders harmless from and against any and all claims, causes of action, damages, costs, expenses (including, but not limited to, attorneys' fees of counsel selected by Landlord) or liabilities for any compensation, commissions, fees, and charges claimed by any other broker or other agent with respect to this Lease or the negotiation thereof and arising out of the acts of Tenant.

Landlord hereby indemnifies, protects, defends and holds Tenant harmless from and against any and all claims, causes of action, damages, costs, expenses (including, but not limited to, attorneys' fees of counsel selected by Tenant) or liabilities for any compensation, commissions, fees, and charges claimed by any other broker or other agent with respect to this Lease or the negotiation thereof and arising out of the acts of Landlord.

No Offer. The submission of this Lease for examination does not constitute an offer to enter into a lease, and this Lease shall become effective only upon execution and delivery hereof by Landlord and Tenant.

Tenant's Environmental Obligation and Environmental Indemnity.

Definitions. For purposes of this paragraph, "hazardous substance" means any matter giving rise to statutory environmental liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601 *et seq.*, the Illinois Environmental Protection Act (IEPA), as well as petroleum and any substance that may create statutory environmental cleanup liability or tort damage under any common law theory based on nuisance or strict liability. For purposes of the foregoing, the term includes, without limitation, asbestos-containing building materials ("ACBM") and lead based paint ("Pb Paint") found within the structures at the Leased Premises.

Tenant acknowledges that Tenant has reviewed reports identifying the presence of ACBM and PbPaint at the Leased Premises.

Tenant shall, at Tenant's sole cost, expense and risk properly and lawfully remove and dispose of all hazardous substances, petroleum, radioactive materials and litter ("Hazardous Materials") found to exist at the Leased Premises from and after the Lease Commencement Date, irrespective of when or how those Hazardous Materials came to be located at the Leased Premises, and properly and lawfully remove and dispose of all Asbestos-Containing Building Material ("ACBM") and Lead-based paint ("PbPaint") found at the Leased Premises, according to, and in compliance with, state and federal law. The Developer will also provide to the City written certification from a qualified environmental expert that all Hazardous Materials have been removed from the Leased Premises and disposed of in compliance with applicable environmental laws and that the Leased Premises is suitable for residential development under the applicable environmental laws. Without limiting the foregoing, the ACBM and PbPaint shall be removed in compliance with, and without limitation, the Clean Air Act 42 U.S.C. Section 7401 *et seq.*, the Asbestos NESHAP promulgated thereunder at 40 CFR Part 61, Subpart M; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*, the Illinois Commercial and Public Building Asbestos Abatement Act, 225 ILCS 207/1 *et seq.*, and regulations promulgated thereunder). And, all Hazardous Materials shall be removed, transported and disposed of in compliance with all state and federal law, and common law, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.

Section 9601 *et seq.* (“CERCLA”) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, (“RCRA”), the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 *et seq.*, the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 *et seq.*, the Illinois Hazardous Materials Transportation Act, 430 ILCS 30/1 *et seq.*, the Illinois Environmental Protection Act 415 ILCS 5/1 *et seq.*, and the regulations promulgated thereunder.

In performing renovation and demolition, as well as abatement and removal of ACBM and PbPaint at the Leased Premises, Tenant shall employ personnel licensed by the Illinois Department of Public Health, as need be, to properly and lawfully renovate, demolish portions of the Leased Premises and remove and dispose of ACBM and PbPaint, and shall provide Landlord, the City of Aurora and the Foundation with the following documentation:

1. An Asbestos Survey identifying the location where ACBM and PbPaint at the Leased Premises prior to initiating any renovation, demolition, removal or abatement activities at the Leased Premises;
2. Copies of Notices required by State and Federal Law to be served prior to initiating renovation, removal, abatement and removal work, with proof of service as required by law;
3. Copies of the Licenses of each and every person involved in the renovation and demolition activities as well as the abatement and removal of ACBM and PbPaint, including without limitation the licenses of the following professions identified and defined in the Illinois Commercial and Public Building Asbestos Abatement Act (225 ILCS 207/1):
  - “asbestos worker(s),”
  - the asbestos professional(s)”
  - the “asbestos supervisor(s),”
  - the “asbestos inspector(s),”
  - the “response action contractor(s)” performing “response action services” (which, in this instance, shall include only removal and not encapsulation),
  - the “abatement contractor(s),”
  - the “air sampling professional(s),”

4. Logs kept and maintained by the removal and abatement contractors performing the abatement and removal work;
5. A description of the design and specific features used to remove and abate ACBM and PbPaint at each floor of the Leased Premises;
6. Laboratory Reports identifying Phase Contrast Microscopy (“PCM”) analytical results from all bulk samples, wipe tests and air samples (including samples collected before abatement activities, during abatement activities and following abatement activities and all sample results used to confirm compliance;
7. Certificates of Compliance that each floor inside each structure at the Leased Premises is asbestos-free and PbPaint free;
8. Copies of the Waste Manifests identifying that the ACBM and PbPaint was properly and lawfully transported to a facility permitted by law to accept and dispose of waste ACBM and PbPaint, identifying Tenant as the Generator;
9. A Final Report prepared by a State of Illinois licensed asbestos abatement consultant acceptable to applicable government agencies, the Landlord, the Foundation and the City of Aurora, identifying the former location of all ACBM and PbPaint described in the Asbestos Survey referred to above, with a statement by the State of Illinois licensed asbestos abatement consultant certifying that the ACBM and PbPaint has been properly and lawfully abated, removed and disposed from the Leased Premises consistent with all state and federal laws and regulation, that the waste was properly and lawfully bagged, marked and disposed at a disposal facility permitted and licensed to accept ACBM and PbPaint waste, and that the report specifically indicates that it is prepared to and for the benefit of Landlord, Tenant, the City of Aurora and the Foundation.

In complying with the obligations associated with Hazardous Materials described above, the Tenant acknowledges receipt of a Phase I Environmental Site Assessment Report dated April 16, 2016, prepared by Midwest Environmental Consulting Services, Inc. for Wills Burke Kelsey Associates, Ltd. (the “Phase I Report”), describing:

One Recognized Environmental Condition at the Leased Premises articulated as follows: “Two pad mounted transformers on the east side of the Power House section of the former hospital and one pad mounted transformer on the west side of the Nurse/Professional Building. None of the transformers had observable leaks or staining.” Tenant shall properly and lawfully remove and dispose of the three pad mounted transformers and contents, perform a subsurface investigation in and around those areas and, if necessary, properly and lawfully remove and dispose of Hazardous Materials in and around the three areas to the satisfaction of the Landlord, the Foundation and the City.

Tenant shall provide evidence of compliance with this section to Landlord, the Foundation and to the City.

A Historical Recognized Environmental Condition articulated as follows: “One 8,000 gallon Diesel Fuel underground storage tank removed in 1996. (Facility #2032546).” Tenant shall perform a subsurface examination in and around that area, and if necessary, properly and lawfully remove and dispose of Hazardous Materials in and around that area to the satisfaction of the Landlord, the Foundation and the City. Tenant shall provide evidence of compliance with this section to Landlord, the Foundation and the City.

A Historical Recognized Environmental Condition articulated as follows: “One closed leaking underground storage tank incident (#961884) for Diesel Fuel closed in 1997 with no restrictions on property use.” Tenant shall perform a subsurface examination in and around that area, and if necessary, properly and lawfully remove and dispose of Hazardous Materials in and around that area to the satisfaction of the Landlord, the Foundation and the City. Tenant shall provide evidence of compliance with this section to Landlord, the Foundation and the City.

In addition, Tenant shall perform a subsurface examination at the four compass points in and around the Leased Premises. If the subsurface examination reveals contamination, then the Tenant has the option of terminating this Lease with no further liability or obligation. If the Tenant decides in its sole discretion to address the subsurface contamination, it will properly and lawfully remove and dispose of Hazardous Materials discovered in that subsurface examination to the satisfaction of the Landlord, the Foundation and the City. Tenant shall provide evidence of compliance with this section to Landlord, the Foundation and the City, if the Tenant decides in its sole discretion to engage in this additional remediation.

Landlord and Tenant agree that, notwithstanding any other term or condition described herein or available at law or in equity, Landlord shall not be responsible to Tenant for the discovery or presence of any such Hazardous Materials found anywhere at the Leased Premises in the absence of clear and convincing evidence that Landlord caused or created the presence of any such Hazardous Materials; provided further, that nothing herein shall imply that Tenant is responsible for fines or penalties incurred or assessed against the Landlord at any time for Landlord’s activities.

Prohibition. Except as described above, Tenant shall not conduct or authorize the generation, transportation, storage, treatment or disposal on or in the Leased Premises of any hazardous substance without prior written authorization by Landlord, which authorization may be withheld in Landlord’s sole discretion, and the Tenant’s failure to comply with the provisions of this Subparagraph shall constitute a default under this Lease,

Remedial Action. If the presence, release, threat of release, placement on or in the Leased Premises by Tenant or its agents, employees or contractors, or the generation, transportation, storage, treatment, or disposal at the Leased Premises of any hazardous

substance by Tenant, its agents, employees or contractors: (i) gives rise to liability (including, but not limited to, a response action, remedial action, or removal action or tort) under RCRA, CERCLA, the IEPA, or any common law theory based on nuisance or strict liability, (ii) causes an adverse public health effect, or (iii) pollutes, or threatens to pollute, the environment, or (iv) causes or creates waste at the Leased Premises, then Tenant shall promptly take, at Tenant's sole cost and expense, any and all remedial and removal action necessary to clean up the Leased Premises and mitigate exposure to any liability arising from the hazardous substance, whether or not required by law.

From and after the Lease Commencement Date, Tenant shall indemnify, protect and hold harmless Landlord, the City of Aurora, and the Foundation, and their affiliates, partners, members, trustees, principals, beneficiaries, directors, officers, shareholders, employees, lenders, property managers, and agents, from all claims and losses arising from or in connection with Hazardous Materials installed by Tenant, or caused by Tenant's failure to comply in full with the Environmental Obligations articulated in this Lease and all environmental laws and requirements with respect to the Leased Premises or Tenant's breach of any provision of this Lease, provided that nothing herein shall be construed to imply that Tenant shall be responsible for fines or penalties incurred or assessed at any time against the Landlord for Landlord's activities or for matters unrelated to the Tenant's demolition and remediation, in which event neither party shall have a claim against the other except for the lien and termination provisions contained herein; and absent clear and convincing evidence that Landlord caused or created the presence of any such Hazardous Materials at the Leased Premises, then from and after the Lease Commencement Date, the costs, fines and fees incurred or assessed thereafter in complying with the terms of this Lease and the removal and disposal of all Hazardous Materials shall be borne by the Tenant, free and clear of any claim against Landlord. Notwithstanding anything to the contrary herein, the City and the Foundation may seek to enforce these provisions as acknowledged third party beneficiaries.

Waiver of Trial by Jury. To the full extent permitted by law, Landlord and Tenant hereby waive all right to trial by jury in any claim, action, proceeding or counterclaims initiated by either Landlord or Tenant against each other and any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use and occupancy of the Leased Premises and/or any emergency or statutory remedy.

Exculpation. This Lease is executed by Landlord and Tenant and is enforceable only against the Landlord's or the Tenant's property, and the income, proceeds and avails thereof held by those entities related to the Leased Premises only. No personal liability shall be asserted or be enforceable against the Landlord or the Tenant, or their successors or assigns, or beneficiaries, managers, members, agents, employees or other individuals, all such liability, if any, being expressly waived by the Landlord and Tenant, their successors and assigns. The terms and conditions herein described, as well as all information learned by being a party to this Lease, shall be kept confidential by the parties, hereto, and shall not

be disclosed to any third party unless compelled by court order or as necessary to enforce any provision of this Lease.

Management Fee. Tenant and Developer shall comply with the terms and conditions of this Lease and shall not pay a management fee to Landlord.

Signage. At Tenant's expense, Tenant may provide a monument sign, directory and suite signage for Tenant in Tenant's sole discretion.

Representation. Tenant represents that Tenant is a wholly owned subsidiary of South Lincoln Development Group LLC, and that Tenant represents that neither Tenant nor South Lincoln Avenue Development Group LLC shall own any investment or leasehold interest in any other property, other than the Leased Premises. In addition to the obligations assumed and agreed to by herein, Tenant shall guaranty the performance of any individual or entity performing the work described hereunder for the use and benefit of Landlord, the City and the Foundation. This provision shall survive the termination of this Lease, and may be enforced by Landlord or by the City or the Foundation as third party beneficiaries as to this obligation.

Governing Law, Venue for Disputes and Severability. This Lease shall be governed and interpreted according to the laws of the State of Illinois. If Landlord or Tenant present a claim against another party to this Lease, that claim or claims shall be decided by the Circuit Court of Illinois located in Kane County, Illinois, irrespective of any claim of improper venue or inconvenient forum. If any term of provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those which are held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Bona Fide Contract Prepared By Both Parties, Following "Arms-Length" Negotiations. Landlord and Tenant acknowledge and agree that this Lease was prepared by each, and each had the assistance and benefit of qualified lawyers licensed in Illinois, and that no term or provision in this Lease shall be construed to have been prepared by either party. Landlord and Tenant represent to each other that this Lease was prepared at the direction of each party, and that it represents a bona fide agreement, reached following "arms-length negotiations" between knowledgeable parties, and that the Lease represents fair and reasonable terms under the circumstances.

No Third Party Beneficiaries. Except as specifically described herein, Landlord and Tenant represent that there are no intended third party beneficiaries to this Lease.

Captions. All headings and captions in this Lease are intended only for the convenience of the Landlord and Tenant, and are not to be deemed or taken as a summary of the provisions to which they pertain or as a construction thereof.

*[Remainder of Page Intentionally Left Blank]*

*[Signature Page(s) Follow]*



IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

**LANDLORD:**

**TENANT:**

RAGHUVVEER P. and ANITA R. NAYAK, Fox Valley Developers, LLC, an Illinois Series 21, a Delaware series limited liability limited liability company company

By: \_\_\_\_\_  
Its manager

By: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF LEASED PREMISES

#### Parcel 1:

Lots 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32, and that part of the vacated alley lying westerly of the easterly line extended northerly of said lot 32, all in Block 5 of Clark Seminary Addition to Aurora (excepting therefrom the easterly 44.0 feet of said Lot 32, and also excepting therefrom the southerly half of the vacated alley lying northerly of and adjoining the easterly 44.0 feet of said lot 32) and the northeasterly and northerly 7.0 feet of that part of Seminary Avenue in the City of Aurora (measured at right angles to the northeasterly and northerly line, respectively, of said Seminary Avenue) lying southerly of and adjacent to the following described line: Beginning at the southwesterly Corner of said Block 5; thence southeasterly along the southwesterly line of said Block 5, 262.46 feet to an angle in said southwesterly line; thence easterly along the southerly line of said Block 5, 400.00 feet for the terminus of said line, all in the City of Aurora, Kane County, Illinois.

#### Parcel 2:

Lots 1, 2 and 4 in Block 6 of Clark Seminary Addition to Aurora, and that part of Lot 3 and the vacated alley in said Block 6 described as follows: Beginning at the Southwesterly Corner of said Lot 3; thence southeasterly along the southwesterly line of said Lot 3, 25.50 feet; thence northeasterly along a line forming an angle of 89 degrees, 15 minutes, and 00 seconds with the last described course (measured clockwise therefrom) 56.43 feet to the northerly line of said Lot 3; thence westerly along said northerly line, 11.18 feet to a point that is 16.68 feet easterly of the northwesterly Corner of said Lot 3; thence northeasterly parallel with the northwesterly line of said Lot 3, 22.24 feet to the southerly line of said Lot 4; thence westerly along said southerly line, 38.92 feet to the most southeasterly corner of said lot 2; thence southeasterly along the southwesterly line of said Block 6, 20.0 feet to the Point of Beginning, in the City of Aurora, Kane County, Illinois.

Commonly known as The Old Copley Hospital, 502 South Lincoln Avenue, Aurora, Kane County, Illinois

#### PINs:

15-27-156-002 (part parcel 1)

15-27-156-003 (part parcel 1)

15-27-156-004 (part parcel 1)

15-27-156-005 (part parcel 1)  
15-27-156-006 (part parcel 1)  
15-27-156-007 (part parcel 1)  
15-27-156-008 (part parcel 1)  
15-27-156-009 (part parcel 1)  
15-27-156-010 (part parcel 1)  
15-27-156-011 (part parcel 1)  
15-27-156-012 (part parcel 1)  
15-27-156-013 (part parcel 1)  
15-27-156-014 (part parcel 1)  
15-27-156-015 (part parcel 1)  
15-27-156-016 (part parcel 1)  
15-27-156-031 (part parcel 1)  
15-27-156-032 (part parcel 1)  
15-27-156-033 (part parcel 1)  
15-27-156-034 (part parcel 1)  
15-27-156-035 (part parcel 1)  
15-27-156-036 (part parcel 1)  
15-27-156-037 (part parcel 1)  
15-27-156-038 (part parcel 1)  
15-27-156-043 (part parcel 1)  
15-27-156-044 (part parcel 1)  
15-27-156-045 (part parcel 1)

15-27-156-046 (part parcel 1)

15-27-156-047 (part parcel 1)

15-27-156-048 (part parcel 1)

15-27-156-049 (part parcel 1)

15-27-156-050 (part parcel 1)

15-27-156-051 (part parcel 1)

15-27-156-052 (part parcel 1)

15-27-155-036 (part Parcel 2)

15-27-155-041 (part Parcel 2)

**EXHIBIT B**

**Court Order dated October 5, 2016**

**EXHIBIT C**  
**DEVELOPMENT AGREEMENT**

**EXHIBIT D**  
**SCOPE OF WORK – DEMOLITION**

**EXHIBIT E**  
**SCOPE OF WORK – ARCHITECTURAL**



**EXHIBIT F**  
**SCOPE OR WORK – ACBM REMOVAL**

**EXHIBIT G**  
**MEMORANDUM OF LEASE**