

**REDEVELOPMENT AND REMEDIATION AGREEMENT  
FOR THE FORMER COPLEY HOSPITAL FACILITY**

This Redevelopment and Remediation Agreement for the Former Copley Hospital Facility (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date") by and between the CITY OF AURORA, Illinois, an Illinois home rule municipal corporation (the "City") and FOX VALLEY DEVELOPERS, LLC, a duly organized Illinois limited liability company (the "Developer") (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. PRELIMINARY STATEMENTS**

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The City is a duly constituted and existing municipality within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois and is a "home rule unit" under Section 6(a) of Article VII of the 1970 Constitution.
- B. The City has the authority, pursuant to its home rule powers and the laws of the State of Illinois, including but not limited to 65 ILCS 5/8-1-2.5, to promote the health, safety and welfare of the City and its residents, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the City, to foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the City.
- C. The Developer desires to ultimately acquire ownership of certain real property commonly known as the Former Copley Hospital Facility, which is legally described in **EXHIBIT A**, attached hereto and made a part hereof (the "Property"), for the purpose of remediating and redeveloping the property.
- D. The Property is currently owned by the Raghuvveer P. and Anita P. Nayak, LLC., Series 21, a duly organized Delaware series limited liability company (the "Nayak LLC").

- E. The Developer desires to redevelop the Property through partial interior demolition and the remediation, removal, and disposal of asbestos containing material and lead paint as set forth in the scope of work attached hereto as **EXHIBIT B**, and made a part hereof, and as described in further detail in the lease set forth **EXHIBIT C**, attached hereto and made a part hereof (the "Project"). The site plan and Project description in **EXHIBITS B** and **C** shall be updated to reflect the final City-approved site plan and Project description if and when the Property receives a planned development permit from the City, and as the planned development permit may be amended from time to time. The Developer shall periodically update the attached estimated cost worksheet **EXHIBIT D**.
- F. It is necessary for the successful completion of the Project that the City enter into this Agreement with the Developer to provide for the successful and timely redevelopment of the Property including, without limitation, remediation of all Hazardous Materials (as defined below) from the Property.
- G. As part of the Project, the Developer desires to perform an interior strip-out of the structures on the Property to remove all Hazardous Materials (as defined below) from the interior of the structures (the "Interior Demolition").
- H. The City, in order to stimulate and induce redevelopment of the Property, has agreed to reimburse the Developer for certain costs of the Interior Demolition and remediation of the Property of all Hazardous Materials in accordance with the terms and provisions and this Agreement and in compliance with the Environmental Laws (as defined below).
- I. This Agreement has been submitted to the Corporate Authorities of the City (as defined below) for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same, and any and all actions taken by the City in furtherance hereof, binding upon the City according to the terms hereof, and any and all actions of the Corporate Authorities of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- J. This Agreement has been submitted to the sole member of the Developer for consideration and review, the Developer's sole member has taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer's members precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

- K. The City is desirous of having the Property remediated, rehabilitated, developed and redeveloped with the Project in order to serve the needs of the City, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the City and, in furtherance thereof, the City is willing to offer Developer the incentives set forth in this Agreement, under the terms and conditions hereinafter set forth, to assist such development.

## II. DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, and as follows:

- A. **“Change in Law”** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

Change in Law means any of the following: (1) the enactment, adoption, promulgation or modification of any federal, State or local law, ordinance, code, rule or regulation (other than by the City, or, with respect to those made by the City, only if they violate the terms of this Agreement); (2) the order or judgment of any federal or State court, administrative agency or other governmental body (other than the City); or (3) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the City, or, with respect to those made by the City, only if they violate the terms of this Agreement). Change in Law, for purposes of this Agreement, shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the City, except as provided herein).

- B. **“City Code”** means the City of Aurora City Code, as amended.
- C. **“City Attorney”** means the Corporation Counsel of the City of Aurora and the Corporation Counsel’s designees
- D. **“Corporate Authorities”** means the Mayor and City Council of the City of Aurora, Illinois.
- E. **“Day”** means a calendar day.

- F. **“Effective Date”** means the day on which this Agreement is executed by the City, with said date appearing on page 1 hereof.
- G. **“Environmental Laws”** means any federal, state, county or local law, statute, ordinance, order, decree, rule or regulation (including but not limited to judicial orders, administrative orders, consent contracts and permit conditions) relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage or disposal of polychlorinated biphenyls, asbestos or urea formaldehyde, to the treatment, storage, disposal or management of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq. ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. §2601, et seq. ("TSCA"), the Occupational, Safety and Health Act, 29 U.S.C. §651, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., the Safe Drinking Water Act, 42 U.S.C. 300f, et seq., and §3001, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq. ("HMTA"), the Clean Water Act, 33 U.S.C. §1251, et seq., the Uranium Mill Tailing Radiation Control Act, 42 U.S.C. §655, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 42 U.S.C. §136, et seq., the National Environmental Policy Act, 42 U.S.C. §4321, et seq., the Noise Control Act, 42 U.S.C. §4901, et seq., the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §4821, et seq., the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, et seq. ("EPCRA"), and the Illinois Environmental Protection Act, and other comparable federal, state, county or local laws and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder, as any or all of the foregoing may from time to time be amended, supplemented or modified.
- H. **“Hazardous Materials”** means "hazardous substances" as defined in CERCLA; "extremely hazardous substances" as defined in EPCRA; "hazardous waste" as defined in RCRA; "hazardous materials" as defined in HMTA; "chemical substance or mixture" as defined in TSCA; crude oil, petroleum and petroleum products or any fraction thereof (including "petroleum" as that term is defined in 42 U.S.C. §6991(8)); radioactive materials including source, by-product or special nuclear materials; asbestos or asbestos-containing materials; and radon.
- I. **“Party” or “Parties”** means the City and/or the Developer, individually/collectively, and their respective successors and/or assigns as permitted herein, as the context requires.

- J. **“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.
- K. **“State”** means the State of Illinois.
- L. **“Uncontrollable Circumstance”** means any event which:
1. is beyond the reasonable control of and without the fault of the Party relying thereon; and
  2. is one or more of the following events:
    - a. a Change in Law;
    - b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
    - c. epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
    - d. governmental condemnation or taking other than by the City;
    - e. strikes or labor disputes, or work stoppages not initiated by the Developer or the City;
    - f. unreasonable delay in the issuance of building or other permits or approvals by the City or other governmental authorities having jurisdiction other than the City including but not limited to the Illinois Department of Transportation (“IDOT”), and/or the Illinois Environmental Protection Agency (“IEPA”);
    - g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
    - h. unknown or unforeseeable geo-technical or environmental conditions;
    - i. major environmental disturbances;
    - j. vandalism; or
    - k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in subsection 2.g. above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to any applicable contractor).

For each day that the City or the Developer is delayed in its performance under this Agreement by an Uncontrollable Circumstance, the dates set

forth in this Agreement shall be extended by one (1) day without penalty or damages to either Party.

### **III. CONSTRUCTION OF TERMS**

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation”.
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.
- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The City Chief Management Officer, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. The Developer is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the City as having been properly and legally given by the City.
- H. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates Michael Poulakidas as its authorized representatives who shall individually have the power and

authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of the Developer and with the effect of binding the Developer in that connection (such individual being designated as an “Authorized Developer Representative”). The Developer shall have the right to change its Authorized Developer Representative by providing the City with written notice of such change from both authorized representatives which notice shall be sent in accordance with Section XVIII.B. of this Agreement.

#### **IV. COOPERATION OF THE PARTIES**

The City and the Developer agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement, and specific approvals by the City in the future, relative to the development of the Property and the Project, including zoning applications relative thereto, and City-issued permits and approvals relative thereto.

#### **V. LEASE OF THE PROPERTY FROM NAYAK LLC**

The Developer shall enter into a lease and environmental remediation agreement for the Property from Nayak LLC, for the purpose of remediating all Hazardous Materials from the Property and completing the Interior Demolition in compliance with the Environmental Laws (“Lease”) on or before October 1, 2018 (“Lease Date”). The Lease shall be subject to the express prior written approval of the City Attorney. Accordingly, the Developer shall provide the City Attorney with a draft of the Lease at least thirty (30) days prior to October 1, 2019\_.

#### **VI. ENVIRONMENTAL REMEDIATION AND INTERIOR DEMOLITION**

A. The Developer shall, subject to Uncontrollable Circumstances:

1. On or before October 1, 2018, contract with an environmental contractor acceptable to the City for the removal and proper disposal of all Hazardous Materials on the Property and for the Interior Demolition of the structures thereon (“Remediation and Demolition Contract”), all as defined by the remediation and demolition scope of work document attached hereto as **EXHIBIT B** and made a part hereof. The removal and disposal of Hazardous Materials from the Property and the Interior Demolition shall be done in compliance with the Environmental Laws and all other applicable State, federal, local, County and City ordinances, laws, rules and regulations. The Remediation and Demolition Contract is subject to the prior express written approval of the City Attorney. Accordingly, the contract shall be provided to the City Attorney at least thirty (30) days prior to October 1, 2018.

2. On or before October 1, 2018, the Developer shall apply for all necessary permits and approvals from all governmental agencies having jurisdiction of the work to be done under the Remediation and Demolition Contract.
3. On or before October 15, 2018, commence the work to be done under the Remediation and Demolition Contract.
4. On or before May 15, 2019, complete the work to be done under the Remediation and Demolition Contract.
5. On or before June 30, 2019, provide the City with written certification from a qualified environmental expert that all Hazardous Materials have been removed from the Property and disposed of in compliance with the Environmental Laws and that the Property is suitable for residential development under the Environmental Laws.

## **VII. CONSTRUCTION OF PROJECT**

- A. Unless otherwise agreed to by the Chief Management Officer of the City, the Developer shall, subject to Uncontrollable Circumstances:
  1. On or before June 30, 2019, submit a complete application to the City for all zoning entitlements and/or zoning approvals necessary for the construction of the Project.
  2. On or before July 31, 2019, appear before the City Planning Commission for all zoning entitlements and/or zoning approvals necessary for the construction of the Project.
  3. On or before August 31, 2019, obtain all zoning entitlements and/or zoning approvals necessary for the construction of the Project.
  4. On or before July 31, 2019, apply for all necessary permits and approvals from all governmental agencies having jurisdiction over the Project as may be required to commence construction of the Project.
  5. On or before October 1, 2019, commence construction of the Project.
  6. On or before December 31, 2020, complete construction of the Project.
  7. On or before August 31, 2021, obtain a Certificate of Project Completion (as defined below).
- B. The Developer and successor owners agree to pay or cause to be paid all general and special real estate taxes levied on the Property during their



respective period of ownership against their respective interest in the Project on or prior to the date same is due and said taxes shall not become delinquent. The Developer and successor owners shall deliver evidence of payment of such taxes to the City upon request.

- C. Consistent with its covenant in subsection B. above, the Developer and successor owners shall not assert a tax-exempt status over any portion of the Property during their respective period of ownership. This prohibition shall run with the land and title of the Property and shall expire on the date this Agreement expires, or an earlier date if agreed to by the City and the Developer.

## VIII. UNDERTAKINGS ON THE PART OF THE CITY

- A. The City agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals, licenses and/or permits from any governmental or quasi-governmental entity other than the City and, upon request of Developer, will promptly execute any applications or other documents (upon their approval by the City) which Developer intends to file with such other governmental agencies, quasi-governmental agencies and/or utility companies in regard to the Project.
- B. The City shall further promptly respond to, and/or process, and consider reasonable requests of Developer for applicable building approvals and/or permits, driveway permits, drive thru permits, planned development permits, special use permits (if and to the extent applicable), curb cut permits, or other approvals, permits and/or licenses necessary for the construction of the Project. Approval of any building approvals and/or permit applications and/or engineering plans and/or operating licenses (including liquor licenses, subject to the applicant therefor being qualified to receive same under both State law and the City's ordinances) shall be contingent on the Developer providing all required and requested documentation including, but not limited to, building plans required to substantiate that said improvements fully conform with all applicable State statutes and also all City ordinances and codes, as well as receipt of all required building approvals from any federal, state, regional or county agencies having applicable jurisdiction.
- C. **Reimbursement of Expenses**. The City shall reimburse the Developer for twenty-five per cent (25%) of its documented out-of-pocket costs for work done under the Remediation and Development Contract up to a maximum of Three Million and No/100 Dollars (\$3,000,000). ("Reimbursement Cap").
  - 1. **Conditions Precedent to Reimbursement**. The City shall authorize the distribution of funds up to the Reimbursement Cap upon satisfaction of the following conditions:

- a. Developer has submitted to the City a reimbursement request on a form reasonably acceptable to the City itemizing the work for which reimbursement is sought, the amount paid for the work and proof that the Developer has paid for the work, including but not limited to appropriate liens waivers and supporting affidavits.
- b. Developer is not in default under this Agreement.
- c. All Hazardous Materials have been removed from the Property and the Interior Demolition has been completed in compliance with the Environmental Laws. Satisfaction of this condition precedent shall be made by written certification of a qualified environmental expert that all Hazardous Materials have been removed from the Property and that the Property is suitable for residential development under the Environmental Laws.
- d. Developer has acquired fee title to the Property.

**IX. DEVELOPER'S OBLIGATIONS**

Developer shall have the obligations set forth below, in addition to those set forth elsewhere in this Agreement, for the development, construction, financing, completion and furtherance of the Project:

- A. The Developer shall construct the Project materially and substantially in conformance with the approvals therefor from the City. The Developer shall pay or cause to be paid all fees required by the City Code.
- B. The Developer shall at all times acquire, install, construct, operate and maintain the Project in substantial conformance with all applicable laws, rules, ordinances, and regulations. All work with respect to the Project shall substantially conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the City, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement.
- C. During the initial construction of the Project as herein contemplated, the Developer shall stage its construction of the Project to avoid to the fullest extent possible any material community disruption. During construction, the Developer shall also keep all public streets used by the Developer clean on

a daily basis, and for each day in which such public streets are not properly clean and such condition is not remedied within twenty four (24) hours of written notice to Developer, the Developer shall pay the City the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) for each such violation.

- D. Developer shall park and stage all construction equipment, materials and vehicles to be used in relation to the construction of the Project on the Property.
- E. Developer shall submit written evidence to the City, in a form and substance reasonably satisfactory to the City, that Developer has access to sufficient funds to pay any costs of the Project within ninety (90) days after the Effective Date. Such evidence may include, without limitation, commitments for financing and/or letters of credit from a lender, and/or investor commitments, for the anticipated costs of such Project.
- F. Developer shall meet with the Corporate Authorities and City staff and make presentations to the Corporate Authorities and City staff as reasonably requested by the Mayor or Chief Management Officer in order to keep the City apprised of the progress of the Project.

#### **X. ADDITIONAL COVENANTS OF DEVELOPER**

- A. **Developer Existence.** Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and good standing as an Illinois Limited Liability Company so long as this Agreement is in effect, and for so long as Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.
- B. **Further Assistance and Corrective Instruments.** The City and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or effectuate or facilitating the performance of this Agreement to the extent legally permitted and within the City's and the Developer's sound legal discretion.
- C. **No Gifts.** Developer covenants that no director, employee or agent of Developer, or any other Person connected with Developer, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the City, or any other Person connected with the City, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the City.

- D. **Disclosure.** Concurrently with execution of this Agreement, Developer shall disclose to the City the names, addresses and ownership interests of all Persons that have an ownership interest in the Developer, together with such supporting documentation that may be reasonably requested by the City. Developer further agrees to notify the City throughout the term of this Agreement of the names, addresses and ownership interests of any changes of owners of the Developer.
- E. **Prevailing Wage.** Developer shall comply with the Illinois Prevailing Wage Act to the extent public improvements relative to the Project, if constructed for, and conveyed to, the City, would be subject to the Illinois Prevailing Wage Act. Developer warrants and represents that it has reviewed the Illinois Prevailing Wage Act, that it has reviewed the regulations promulgated thereunder, and that it understands the obligations imposed on it by this Section X.

## XI. ADHERENCE TO CITY CODES AND ORDINANCES

Except as otherwise provided for in this Agreement, all development and construction of the Project shall comply in all respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the City and all other germane codes and ordinances of the City in effect from time to time during the course of construction of the Project.

## XII. SPECIAL CONDITIONS

- A. **Certificate of Project Completion.** Within thirty (30) days after written request from Developer, and provided that Developer has not received any notice of default under this Agreement or notice of non-compliance with any City codes with respect to Developer's construction obligations, any of which have not been cured, and after the City has issued the final certificate of occupancy for the proposed building on the Property, and has confirmed that the proposed building on the Property has been constructed in substantial and material compliance with all City codes and this Agreement, the City shall deliver a certificate of completion and satisfaction of all construction terms, covenants and conditions contained in this Agreement (the "Certificate of Project Completion") or, if not complete or satisfied, a written statement as to what deficiencies exist, and upon Developer's correction of such issues, the City shall then promptly issue to Developer a Certificate of Project Completion.
- B. **Certification of Developer's Project Cost.** Within thirty (30) days of the issuance of the Certificate of Project Completion, the Developer shall certify, in writing, to the City, the amount spent by the Developer (inclusive of all

hard and soft costs) to complete the Project, and an estimate of the number of jobs to be generated or created by the Project.

- C. **Employment Opportunities.** To the extent feasible, the Developer shall make reasonable efforts to notify City residents of employment opportunities that are available relative to the Project, and, to the extent permitted by law, make reasonable efforts to employ qualified residents of the City in relation to the Project.

### **XIII. REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until completion of the Project:

- A. Developer is an Illinois Limited Liability Company and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.
- B. Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners, directors, or venturers is now a party or by which Developer or any of its partners, directors or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its partners, directors or venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners, directors or venturers is now a party or by which Developer, any related party or any of its partners, directors or venturers is bound.

- C. Developer has, or will have within sixty (60) days of the Lease Date, sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.
- D. Developer represents and warrants that it has not received any notice from any local, State or federal official that its activities with respect to the Property and/or the Project may or will be in violation of any environmental law or regulation. With the exception of the CERCLA Notice served by the City on Raguveer P. Nayak and Anita P. Nayak on or about July 27, 2017, Developer is not aware of any State or federal claim filed or planned to be filed by any Party relating to any violation of any local, State or federal environmental law, regulation or review procedure, and Developer is not aware of any violation of any local, State or federal law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute. Developer acknowledges that it has received a copy of said CERCLA Notice and all supporting documentation from the City and has had an opportunity to review the same with an attorney and a qualified environmental expert. The Developer desires to enter into this Agreement with full knowledge of the CERCLA Notice, all supporting documentation and the Hazardous Materials revealed therein.
- E. Developer represents and warrants to the City that Developer, and its respective principals, are experienced in the development and operation of projects similar or comparable to the Project, and are able to provide the Project with the necessary skill, knowledge and expertise as well as input from other experts and consultants in the construction and operation of such a Project.

#### **XIV. REPRESENTATIONS AND WARRANTIES OF THE CITY**

The City represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

- A. The City is an Illinois home rule municipal corporation duly organized and validly existing under the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.
- B. The execution, delivery and performance of this Agreement and the consummation by the City of the transactions provided for herein and the compliance with the provisions of this Agreement:
  - 1. have been duly authorized by all necessary corporate action on the part of the City;
  - 2. require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement; and

3. shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the City is subject.
- C. The City has sufficient financial and economic resources to implement and complete the City's obligations contained in this Agreement.

## **XV. INSURANCE**

- A. The Developer, and any successor in interest to the Developer, shall obtain and continuously maintain insurance on the Property and the Project and, from time to time at the request of the City, furnish proof to the City evidence that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain, provided that the Developer shall obtain the insurance described in subsection 1. below prior to the commencement of construction of any portion of the Project:
1. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
  2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy on a primary non-contributory basis naming the City and its officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than \$5,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
  3. Workers compensation insurance, with statutory coverage if applicable to the Developer.
- B. All insurance required in this Section XV. shall be obtained and continuously maintained through responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Section XV., cancellation relative to each policy shall be as provided by the policy; however, the City must be named as a cancellation notice recipient. Not less than fifteen (15) days prior to the expiration of any policy,

the Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section XV. In lieu of separate policies, the Developer or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

## **XVI. INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS**

- A. Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, including independent contractors, consultants, attorneys, servants and employees thereof (for purposes of this Section XVI., collectively the "City Indemnified Parties") shall not be liable for, and agrees to indemnify and hold harmless the City Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Property or arising pursuant to the Developer's obligations or warranties under this Agreement or actions in furtherance thereof to the extent not attributable to the gross negligence or willful misconduct of the City Indemnified Parties; provided, that this waiver shall not apply to the warranties made or obligations undertaken by the City in this Agreement.
- B. The Developer (and all consultants, contracts and sub-consultants and sub-contractors into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees and waives any limitation of liability defense based upon the Worker's Compensation Act and cases decided thereunder. The Developer agrees to indemnify the City and the City Indemnified Parties from and against all such loss, expense, damage or injury, including reasonable attorney fees, which the City and the City Indemnified Parties, may sustain as a result of personal injury claims by the Developer's employees and by the any consultants, contractors, sub-consultants and sub-contractors and their respective employees.
- C. Except for gross negligence or willful misconduct of the City Indemnified Parties, Developer agrees to indemnify the City Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or if other Persons acting on their behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the lease, acquisition, demolition, remediation, construction, installation, ownership, and operation of the Project.
- D. Except as otherwise set forth herein, the City makes no warranties or representations regarding, nor does it indemnify the Developer with respect to,



the existence or nonexistence on or in the vicinity of the Property of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Materials allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Property, as well as any activity claimed to have been undertaken on or in the vicinity of the Property, that would cause or contribute to causing (1) the Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 *et seq.*, or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Property, within the meaning of, or otherwise bring the Property within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, or any similar State law or local ordinance. Further, the City makes no warranties or representations regarding, nor does the City indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within the Property of any substances or conditions in or on the Property, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The City makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Property, or whether any above or underground tanks have been located under, in or about the Property have subsequently been removed or filled. The City warrants and represents to Developer that it has not received notice, other than as already provided to the Developer by the City in the environmental reports provided to the Developer by the City, from any agency, individual or entity of any violation of any environmental law relating to any Hazardous Materials affecting the Property.

- E. The Developer waives any claims against the City Indemnified Parties, and their members and boards, for indemnification, contribution, reimbursement or other payments arising under federal, State and common law relating to the environmental condition of the land comprising the Property and the structures on the Property.

- F. No liability, right or claim at law or in equity shall attach to or shall be incurred by the City's Mayor, Aldermen, officers, officials, attorneys, agents and/or employees, and any such rights or claims of the Developer against the City's Mayor, Aldermen, officers, officials, attorneys, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the City.

## **XVII. EVENTS OF DEFAULT AND REMEDIES**

- A. **Developer Events of Default.** The following shall be Events of Default with respect to this Agreement:

1. If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall not constitute an Event of Default if Developer remedies the default, within thirty (30) days after written notice from the City or Developer, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within ninety (90) days after such notice.
2. Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of Developer; provided, however, that such default or breach shall not constitute an Event of Default if such default is cured within said thirty (30) days or Developer, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within sixty (60) days after such notice.
3. Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and the Developer, within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within sixty (60) days after such notice.

4. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of forty five (45) consecutive days.
5. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.
6. Failure to have funds as timely required to meet Developer's obligations to construct the Project and obtain a Certificate of Project Completion.
7. A sale, assignment, or transfer of the Project, except in accordance with this Agreement.
8. Material change in the management of Developer, except in accordance with this Agreement.
9. Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than thirty (30) consecutive days for any reason other than Uncontrollable Circumstances and such work is not resumed within thirty (30) days of written demand by the City.

10. Developer fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project contemplated by this Agreement and such failure continues for more than thirty (30) days after written notice thereof from the City; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and Developer, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within sixty (60) days after such notice. The maintenance requirement of this provision shall not be covered by and shall survive any Certificate of Project Completion or Estoppel Certificate of any kind issued during the term of this Agreement.
11. A material representation or warranty of Developer is not true for a period of thirty (30) days after written notice from the City; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and Developer, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within sixty (60) days after such notice.

B. **City Events of Default.** The following shall be Events of Default with respect to this Agreement:

1. If any material representation made by the City in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall not constitute an Event of Default if City remedies the default within thirty (30) days after written notice from Developer or City, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within ninety (90) days after such notice.
2. Default by the City in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the City; provided, however, that such default or breach shall constitute an Event of Default only if the City does not, within thirty (30) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within sixty (60) days after such notice.

3. Default by the City in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the City commences cure within thirty (30) days after written notice from Developer and in any event cures such default within sixty (60) days after such notice, subject to Uncontrollable Circumstances.
4. A material representation or warranty of the City is not true for a period of thirty (30) days after written notice from Developer; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and the City, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within sixty (60) days after such notice.

C. **Remedies for Default.** In the case of an Event of Default hereunder:

1. The defaulting Party shall, upon written notice from the non-defaulting Party, take prompt action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within the cure periods specified therefor, unless extended by mutual agreement, the non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.
2. In case a Party shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, the Parties shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the City shall continue as though no such proceedings had been taken.
3. In no event shall either Party be liable to the other for any consequential or punitive damages suffered as a result of a default under this Agreement.

D. **Agreement to Pay Attorneys' Fees and Expenses.** In the event an Event of Default is not cured within the applicable cure periods and the Parties employ an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or

observance of any obligation or agreement herein contained, the non-prevailing Party shall pay, on demand, the prevailing Party's reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action.

- E. **No Waiver by Delay or Otherwise.** Any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that any Party should not be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.
- F. **Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.
- G. **Legal and Other Fees and Expenses.** Other than for demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings covered herein, in the event that any third party or parties institute any legal proceedings against the Developer and/or the City, which relate to the terms of this Agreement, then, in that event, the Parties shall cooperate in the defense of any such lawsuit, with each Party assuming, fully and vigorously, its own defense of such lawsuit, and all costs and expenses of its own defense, of whatever nature (including attorney's fees).

## **XVIII. EQUAL EMPLOYMENT OPPORTUNITY**

- A. **No Discrimination.** Developer shall comply with all federal, state and local laws relating to equal employment opportunity. To the extent permitted by law, Developer shall use reasonable efforts to employ qualified residents of the City as to any direct hires by the Developer, if applicable.
- B. **Advertisements.** Developer shall, in all solicitations or advertisements for employees placed by or on behalf of Developer, if applicable, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. **Contractors.** Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in subsections A. and B. above. The Developer shall make reasonable efforts to incorporate language similar to that recited in subsections A. and B. in any leases made by Developer in connection with the Project.

## **XIX. MISCELLANEOUS PROVISIONS**

- A. **Cancellation.** Notwithstanding any terms in this Agreement to the contrary, in the event Developer or the City shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, including Developer's duty to build the Project and operate the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of any ordinance adopted by the City in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project or the covenants and agreements or rights and privileges of Developer or the City, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other Parties within one hundred twenty (120) days after such final decision or amendment. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Developer for buildings, or the remodeling of any building, permitted and under construction, to the extent permitted by said court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded, properly executed document.
- B. **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) electronic communications, whether by electronic mail, telex, telegram or telecopy, but only if followed up, within one (1) business day, by another method of notice, (3) overnight courier, or (4) registered or certified first class mail, postage prepaid, return receipt requested.

If to City: Chief Management Officer  
City of Aurora  
44 E. Downer Place  
Aurora, Illinois 60507  
Email: [aalexandrou@aurora-il.org](mailto:aalexandrou@aurora-il.org)

With a copy to: City of Aurora Law Department  
44 E Downer PI

Aurora, Illinois 60507  
Attention: Corporation Counsel  
Email: [COALaw@aurora-il.org](mailto:COALaw@aurora-il.org)

and: Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606-2903  
Attention: Jason A. Guisinger  
Email: [jaguisinger@ktjlaw.com](mailto:jaguisinger@ktjlaw.com)

If to Developer: Fox Valley Developers, LLC  
346 N Lake St.  
Aurora, IL 60506  
Attention: Michael Poulakidas  
Email: [michael@mjplawoffice.com](mailto:michael@mjplawoffice.com)

With a copy to: Nealis & Garrow  
510 S Batavia Ave  
Batavia, IL 60510  
Attention: Alan L. Garrow  
Email: [agarrow@nealisgarrow.com](mailto:agarrow@nealisgarrow.com)

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (1) or (2) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (3) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (4) shall be deemed received forty-eight (48) hours following deposit in the mail.

- C. **Time is of the Essence.** Time is of the essence of this Agreement. Notwithstanding the foregoing, if the date for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the date of such performance shall be extended to the next business day.
- D. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, but in no event less than two (2) counterparts, each of which shall be an original and each of which shall constitute but one and the same Agreement.



- F. **Recordation of Agreement.** The Parties agree to record this Agreement with the Kane County Recorder's Office against title to the Property. The Developer shall pay the cost of the recording charges. The Developer's rights and obligations in this Agreement are covenants running with title to the Property and successor owners of the Property shall be and are bound by this Agreement to the same extent as Developer.
- G. **Severability.** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.
- H. **Choice of Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, and any court proceedings between the Parties hereto shall be brought in Kane County, Illinois.
- I. **Entire Contract and Amendments.** This Agreement (together with the exhibits attached hereto) is the entire contract between the and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and the Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto.
- J. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other Person other than the City and the Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to the City and the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.
- K. **Waiver.** Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.
- L. **Cooperation and Further Assurances.** The City and the Developer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto

the City or the Developer, or other appropriate Persons, all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

- M. **No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third party to create the relationship of a partnership, agency or joint venture between or among such Parties.
- N. **No Personal Liability of Officials of the City or the Developer.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Corporate Authorities, City Administrator, any elected official, officer, partner, member, shareholder, manager, director, agent, employee or attorney of the City or the Developer, in his or her individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the City or the Developer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.
- O. **Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the City's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.
- P. **Term.** This Agreement shall remain in full force and effect for a period of two (2) years from the Effective Date, and shall renew for one successive five (5) year periods thereafter, unless cancelled or terminated in accordance with the terms herein, or until the Parties have fulfilled all of their respective duties to each other under the Agreement.
- Q. **Estoppel Certificates.** Each of the Parties hereto agrees to provide the other, upon not less than fifteen (15) days prior request, a certificate ("Estoppel Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which case such Party shall specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, and if, after an additional seven (7) days' notice there still is no compliance, then said non-complying Party shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.
- R. **Assignment.** This Agreement, and the rights and obligations hereunder, may not be assigned by Developer prior to the expiration of one (1) year from the

date the City issues Developer a Certificate of Project Completion, unless the City consents in writing to such assignment which consent shall not be unreasonably withheld or delayed, and unless the assignee consents in writing to be bound by the terms of this Agreement. Thereafter, Developer may sell or transfer the Property, and assign its right, duties and obligations hereunder, without the consent or approval of the City.

S. **Municipal Limitations.** All City commitments hereunder are limited to the extent required by law.

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

**CITY OF AUROA,**  
an Illinois home rule municipal corporation

**ATTEST:**

By: \_\_\_\_\_  
Richard C. Irvin, Mayor

By: \_\_\_\_\_  
Wendy McCambridge, Clerk

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

\_\_\_\_\_,  
an \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Illinois        )  
                                  ) SS  
County of Cook        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Richard C. Irvin and Wendy McCambridge, personally known to me to be the Mayor and Clerk of the City of Aurora, Illinois 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 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 Corporate Authorities of said Illinois home rule municipal corporation, as their free and voluntary act, 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 \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT**

State of Illinois     )  
                                  ) SS  
County of Cook     )

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 \_\_\_\_\_ of \_\_\_\_\_, and 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 severally acknowledged that as such \_\_\_\_\_, he / she signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the members of said \_\_\_\_\_, as his / her free and voluntary act, and as the free and voluntary acts and deeds of said \_\_\_\_\_, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public