

## NON-REVOLVING LINE OF CREDIT NOTE

\$1,500,000.00

May \_\_, 2023

1. **Agreement to Pay.** FOR VALUE RECEIVED, the undersigned, **FOX VALLEY DEVELOPERS, LLC, an Illinois limited liability company** (herein called "Borrower"), promises to pay to the order of **CITY OF AURORA, ILLINOIS, an Illinois home rule municipal corporation** (herein, together with each successive owner and holder of this Note, called "Lender") in the manner provided for herein and in the Loan Documents hereinafter referred to, the principal sum of One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00), or so much as may from time to time be disbursed and remain unpaid hereunder, together with interest in arrears on the balance of principal remaining from time to time unpaid at the rates provided for in Sections 4 and 5 hereof from and after the date of disbursement ("Disbursement Date") that all or any portion of the proceeds of the loan evidenced hereby shall have been initially disbursed.

2. **Nature of Loan.** The loan evidenced hereby is a non-revolving loan of up to One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) to be disbursed in accordance with the Loan Agreement in connection with the funds required by Borrower to construct the buildout of approximately \_\_\_\_\_ square foot medical facility (the "Project") to be located at the Premises (hereinafter defined).

3. **Definitions.** For the purposes hereof, the following terms shall have the meanings set forth below:

A. "Default Rate" shall mean interest payable at the rate set forth in Section 5 hereof.

B. "Loan" shall mean the aggregate indebtedness evidenced by this Note.

C. "Loan Agreement" shall mean and refer to the Construction Loan Agreement bearing even date herewith describing and governing disbursement of the Loan entered into concurrent with the execution and delivery hereof. Any capitalized terms that are not otherwise defined herein shall have those meanings as set forth in the Loan Agreement.

D. "Maturity Date" shall mean and refer to the date on which the unpaid principal balance and all accrued and unpaid interest hereunder is due, whether by acceleration or otherwise. Subject to acceleration as herein provided, the Maturity Date shall be December \_\_, 2035 (the "Construction Loan Maturity Date"). Provided that if on or before the Construction Loan Maturity Date (i) there shall not have been an Event of Default under the Loan Agreement or any other Loan Document which has not been waived by Lender,

(ii) no material adverse change has occurred in the financial condition of the Project, Borrower or any Guarantor, as reasonably determined by Lender, and  
(iii) the Project is substantially completed lien-free evidenced by a temporary certificate of occupancy and in accordance with the Loan Agreement, as determined by Lender in Lender's reasonable discretion.

E. "Obligations" shall mean all liabilities, indebtedness and obligations of Borrower to Lender, howsoever created, arising or evidenced, and howsoever owned, held or acquired, whether now or hereafter existing, now due or to become due, direct or indirect, absolute or contingent, primary or secondary or joint or several, including without limitation all principal, accrued interest (including without limitation interest accruing after the filing of any petition in bankruptcy), present and future advances made by or on behalf of Lender, under the Loan Documents to or for the benefit of Borrower, obligations of performance, charges, expenses, attorneys' fees and other sums chargeable to Borrower by Lender, collection and other costs and expenses incurred by or on behalf of Lender, whether incurred before or after judgment, and all other present and future liabilities, indebtedness and obligations of Borrower under the Loan Documents.

F. "Premises" shall mean the real estate commonly known as \_\_\_\_\_, which is located in the City of Aurora, County of Kane, State of Illinois, together with all site improvements and structures constructed and personal property situated thereupon.

G. "Regular Rate" shall mean a fixed rate equal to five and one half percent (5.5%).

4. **Interest Rate Prior to Default.** Borrower shall pay interest to Lender on the principal balance hereof outstanding from time to time prior to default at the Regular Rate. The per diem calculation of interest shall be on the basis of a three hundred sixty (360) day year, and the per diem sum so ascertained shall be multiplied by the number of days in each respective billing period to determine the amount of interest from time to time due and owing.

5. **Default Rate.** In the event that there shall occur:

A. Any monetary default hereunder that shall continue after such payment is due hereunder; or

B. Any Event of Default under any of the Loan Documents; or

C. Maturity of the indebtedness evidenced hereby, whether by passage of time, acceleration, declaration or otherwise; or

D. If Borrower fails to perform and comply, in a timely manner, with all terms, conditions and provisions set forth in this Note, in the Loan Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement; or

E. If Borrower fails to (i) maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, or (ii) provide written notice to Lender of any change in executive and management personnel, or (iii) conduct Borrower's business affairs in a reasonable and prudent manner; or

F. If Borrower fails to (i) comply in all respects with any and all environmental laws, or (ii) cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities, or (iii) furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environmental and/or other natural resources; or

G. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws or by or against Borrower; or

H. If this Note or any of the Loan Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason; or

I. If a material adverse change occurs in Borrower's or any Guarantors financial condition, or Lender reasonably believes the prospect of payment or performance of the Loan is impaired; or

J. If Lender in good faith deems itself insecure in Lender's sole discretion; or

K. If The Borrower is not in compliance with the "Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois,"

dated November 12, 2019, by and between the Lender, the Borrower and the Guarantor, as amended (the "Redeveloper Agreement"); or

L. If any Guarantor fails to comply with the minimum asset requirements set forth in the Redevelopment Agreement; or

M. If Borrower fails to obtain a certificate of occupancy for the Project from the Lender by no later than \_\_\_\_\_, 202\_.

N. If any Guarantor shall die or be adjudged legally incompetent, and a replacement guarantor, that is acceptable to Lender in Lender's sole discretion, is not found within sixty (60) days of said guarantor's dissolution, death or having been adjudged legally incompetent; or

O. If Borrower or any Guarantor assumes or obtains any additional debt during the term of the Loan without Lender's prior written consent, as determined by Lender in Lender's sole discretion on an annual basis during the term of the Loan,

then and in any such event, the entire principal balance hereof and all indebtedness secured herein shall thereafter bear interest at a rate equal to Five Percent (5%) per annum in excess of the Regular Rate for each day all or any part of the principal balance hereof shall remain outstanding or until the default referred to above shall be cured, whichever shall first occur. As a condition to curing any such default, however, Borrower shall pay all amounts in default together with interest charged at the Default Rate.

6. **Late Charge.** Without limiting the provisions of Section 5 hereof, in the event any installment of interest and/or principal and interest is not paid within ten (10) days of the due date thereof the undersigned promises to pay a late charge of Five Percent (5.00%) of the amount due to defray the expense incident to handling any such delayed payment or payments.

7. **Payments.** Notwithstanding anything to the contrary herein, all payments of principal and interest under this Note are deferred until January 1, 2030. Interest that accrues prior to January 1, 2030 will accrete and be added to the outstanding principal balance. As of January 1, 2030 the outstanding principal balance and accreted interest will be straight line amortized over sixty (60) months with principal and interest payments made monthly. The first payment shall be due on February 1, 2030.

8. **Prepayment Privilege.** The Borrower may prepay on any installment payment date the unpaid principal balance of this Note, in whole or in part, without penalty, provided that (a) Borrower gives Lender not less than ten (10) business days prior written notice of its intention to do so; and (b) Borrower pays, at the time

of such prepayment and in addition thereto, all accrued interest to the date of such prepayment, all other unpaid indebtedness then due.

9. **Application of Payments.** All payments on account of the indebtedness evidenced by this Note shall be applied as follows:

A. First to indebtedness secured by the Loan Documents, as hereinafter defined, other than the principal hereof and interest hereon charged at the Regular Rate, and specifically including but without limitation, late charges and interest, if any, charged at the difference between the Regular Rate and the Default Rate;

B. Current interest on the unpaid principal balance hereof at the applicable Regular Rate; and then

C. The unpaid balance of the Loan.

10. **Method and Place of Payment.** Payments upon this Note shall be made in lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment, and shall be made at such place as Lender may from time to time in writing appoint, provided that in the absence of such appointment all payments hereon shall be made at the offices of Lender, \_\_\_\_\_, Aurora, IL 60504.

11. **Loan Documents.** This Note is a full recourse obligation of Borrower, is given to evidence an actual loan in the above amount, and is the Note referred to in and secured by, among other documents, the following and such other instruments evidencing, securing, or pertaining to the Loan as shall, from time to time, be executed and delivered by Borrower or any other party to Lender (collectively, the "Loan Documents"):

A. A Guaranty (herein, together with the Completion Guaranty, individually and collectively called the "Guaranty") of Guarantor bearing even date herewith;

B. A Construction Loan Agreement (herein called the "Loan Agreement") bearing even date herewith by and among Borrower and Lender pursuant to which the proceeds of the Loan evidenced hereby shall be disbursed;

C. An Assignment of Beneficial Interest in the Premises (herein called the "Assignment") bearing even date herewith, made by Borrower, as assignor, assigning to Lender its beneficial interest in the Premises;

Reference is hereby made to the Loan Documents, which are incorporated herein by this reference as fully and with the same effect as if set forth herein at length, for a

description of the collateral securing the Loan, a statement of the covenants and agreements of the Borrower and Guarantor, a statement of the rights, remedies and security afforded thereby, and all other matters therein contained.

12. **Default and Acceleration.** At the election of Lender and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall be and become at once due and payable at the place herein provided for payment upon the occurrence of a default hereunder or an Event of Default under any of the other Loan Documents and the expiration of any applicable cure periods.

13. **Usury.** Borrower represents that the loan evidenced by this Note is exempt from any limitations on the rate of interest that may be charged hereunder. In no event shall any interest or payment in the nature of interest be charged or collected by Lender or paid by Borrower which shall exceed the maximum contract interest rate now allowed for a loan of this type by the laws of the State of Illinois (the "Maximum Interest Rate"). It is the intention of Lender and Borrower not to contract for a greater rate of interest than the Maximum Interest Rate. Interest, or any payment determined to be in the nature of interest, charged or collected by Lender or paid by Borrower exceeding the Maximum Interest Rate shall be deemed to result from mutual mistake, and any sums so charged, collected, or paid shall be refunded to Borrower.

14. **Costs of Enforcement.** In the event that this Note is placed in the hands of an attorney-at-law for collection after maturity, or in the event that proceedings at law, in equity, or bankruptcy, receivership or other legal proceedings are instituted or threatened in connection herewith, or if Lender or its participant, if any, is made a party to any such proceeding, or in the event that this Note is placed in the hands of an attorney-at-law following a default hereunder or under any of the Loan Documents to enforce or interpret any of the rights or requirements contained herein or in the Loan Documents or other instruments given as security for, or related to, the indebtedness evidenced hereby, the Borrower hereby agrees to pay all reasonable costs of collecting or attempting to collect this Note, or protecting, interpreting or enforcing such rights, including, without limitation, reasonable attorneys' fees, costs and expenses (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder; all of which shall be secured by the Loan Documents.

15. **Notices.** All notices required or permitted to be given hereunder shall be given in the manner and to the place as provided in the Mortgage and Security Agreement for notices to the party to whom such notice is given.

16. **Time.** Time is of the essence of this Note and each of the provisions hereof.

17. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

18. **Disbursement to Escrow.** Funds representing the proceeds of the indebtedness evidenced hereby which are disbursed by Lender by mail, wire transfer or other delivery to the Borrower or at Borrower's direction, to escrows or otherwise for the benefit of the Borrower, for all purposes, shall be deemed outstanding hereunder and to have been received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such wire transfer, mailing or delivery and until repaid, notwithstanding the fact that such funds may not at any time have been remitted by such escrows to Borrower or for its benefit.

19. **Governing Law.** This Note is delivered to Lender in the State of Illinois and the Loan is disbursed in the State of Illinois. Accordingly, this Note shall be governed by the laws of the State of Illinois.

20. **Waivers.** Borrower hereby:

A. Waives demand, presentment for payment, notice of nonpayment and protest;

B. Waives notice of and consents to any and all extensions of this Note, or any part thereof, the release of all or any part of the security for this Note, or the release of any party liable hereon, and agrees that such extension or release may be made at any time and from time to time without notice to the Borrower and without discharging its liability, if any, and without affecting any lien or security given for this Note;

C. Waives any and all notice of whatsoever kind or nature, except where notice is specifically required by applicable law, hereunder or under the other document which evidences, secures or governs the disbursement of the loan evidenced hereby and the exhaustion of legal remedies hereon; and

D. Waives any and all rights to a trial by jury.

21. **Representations and Warranties.** Borrower represents and warrants to Lender, as of the date of this Note, as of the date of each disbursement of Loan proceeds, as of the date of any renewal, extension or modification of the Loan, and at all times any indebtedness exists:

A. Borrower is a limited liability company for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Illinois. Borrower is duly authorized to

transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at \_\_\_\_\_, Aurora, IL 60504. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning all collateral securing the Loan. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

B. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

C. All deposit accounts and operating accounts of Borrower and Borrower's subsidiaries are located at Lender and Borrower has no other deposit accounts except those listed on Schedule 1 attached hereto.

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

**22. Forbearance.** Any forbearance by Lender in exercising any right or remedy under this Note or any of the other Loan Documents or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any of its rights or remedies under any of the Loan Documents with respect to Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

**23. Authorization for Advances.** Advances under this Note shall be made as set forth in the Loan Agreement. Borrower agrees to be liable for all sums either:



(i) advanced in accordance with the instructions of an authorized person or (ii) credited to any of Borrower's accounts with Lender. The unpaid balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (i) Borrower or any Guarantor is in default under the terms of this Note or any agreement that Borrower or any Guarantor has with Lender, including any agreement made in connection with the signing of this Note, subject to any applicable grace period(s); (ii) Borrower or any Guarantor ceases doing business or is insolvent; (iii) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of this Note or any other loan or agreement with Lender; or (d) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender.

**24. Right of Setoff.** Upon a default or Event of Default under this Note and any of the other Loan Documents, Lender reserves a right of setoff in all Borrower's right to economic incentives under all other agreements between the Lender and the Borrower including, without limitation, the Redevelopment Agreement (as defined above). This includes all rights to economic incentives from Lender that Borrower holds jointly and with someone else and all such rights Borrower may acquire in the future.

**25. Confession of Judgment.** Borrower hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess a judgment against Borrower for the unpaid amount of this Note as evidenced by an affidavit signed by an officer of Lender setting forth the amount then due, attorneys' fees plus costs of suit, and to release all errors, and waive all rights of appeal. If a copy of this Note, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as Lender may elect until all amounts owing on this Note have been paid in full. Borrower hereby waives and releases any and all claims or causes of action which Borrower might have against any attorney acting under the terms of authority which Borrower has granted herein arising out of or connected with the confession of judgment hereunder.

**26. Patriot Act.** Lender hereby notifies Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (the "Patriot Act"), Lender is required to obtain, verify and record information that identifies Borrower and the other credit parties. Borrower agrees to provide to Lender promptly upon Lender's request, such information as Lender shall require for purposes of complying with the requirements of the Patriot Act, the federal regulations issued pursuant to

the Patriot Act and any customer identification program established by Lender in accordance therewith.

27. **Indemnity.** Borrower shall indemnify and hold Lender harmless from and against all claims, costs, expenses, actions, suits, proceedings, losses, damages and liabilities of any kind whatsoever, including but not limited to reasonable attorneys' fees and expenses, arising out of any matter relating, directly or indirectly, to the Loan, to the ownership, development, construction, or sale of any property securing the Loan, whether resulting from internal disputes of Borrower, disputes between Borrower and any guarantor, or whether involving other third persons or entities, or out of any other matter whatsoever related to any of the Loan Documents, or any property encumbered thereby, but excluding any claim or liability which arises as the direct result of the gross negligence or willful misconduct of Lender. This indemnity provision shall continue in full force and effect and shall survive not only the making of the Loan and the advances but shall also survive the repayment of the Loan and the performance of all of Borrower's other obligations hereunder.

28. **Assignment.** Lender may at any time assign its rights in this Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and Lender thereafter shall be relieved from all liability with respect to such collateral. In addition, Lender may at any time sell one or more participations in this Note. Borrower may not assign its interest in this Note, or any other agreement with Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Lender.

29. **Participation.** Lender shall have the right, at its sole discretion, to invite participants to participate in or to purchase all or portions of the Loan, and Borrower agrees to execute any administrative documents reasonably requested by Lender in connection with any such participation or purchase. In the event of any such participation, Borrower shall not be obligated to pay any additional fees related thereto.

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

Dated as of the day and year above written.

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

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

**SCHEDULE 1**

**BANK ACCOUNTS**

None