

PROPERTY ADDRESS:

Southeast of IL Rt. 59 and 103rd Street
on Tower Drive
Naperville, IL 60564

P.I.N.

01-15-101-044 [part of]

RETURN TO:

City of Naperville

City Clerk/Community Services
400 South Eagle Street
Naperville, IL 60540

**CITY OF NAPERVILLE AFFORDABLE
SENIOR AND IDD HOUSING
MAJOR BUSINESS TERMS**

The following list sets forth the Major Business Terms for a mixed use residential development to provide affordable housing for seniors and for individuals with intellectual disabilities and/or developmental disabilities (the “**Project**” as defined herein) which terms have been agreed upon between the City of Naperville, a home rule unit of local government under the laws and Constitution of the State of Illinois (“**City**” or “**City of Naperville**”), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and _____, with offices at _____ which is authorized to transact business in the State of Illinois (“**Developer**”).

Where words are capitalized in this document, they have the meanings set forth in Section 2 below.

1. PROJECT DESCRIPTION

1.1 The City of Naperville seeks to facilitate and promote the construction and operation of a residential development Project which will provide a mix of Affordable rental housing for Seniors who are 62 and older and individuals with Intellectual Disabilities and/or Developmental Disabilities who are 18 and older in order to reduce housing gaps identified in the City of Naperville 2020 Housing Needs Assessment/Housing Needs Report. The Project shall remain Affordable as defined herein for a minimum of _____ years (referenced herein as the “**Minimum Affordability Period**”).

The City owns a parcel of real property approximately 22.1 acres in size located southeast of the intersection of IL Route 59 and 103rd Street in Naperville, IL 60564 as depicted and described on **Exhibit A** (the “**City Property**”).

Developer proposes to develop approximately 6.1 acres of the City Property for the Project on the property delineated on **Exhibit A** (the “**Project Property**”). The exact location and

acreage of the Project Property may be modified by agreement of the City and the Developer as reflected in the OAA, as defined herein. The location of the Project Property and its intended use as set forth herein is consistent with the City of Naperville 2022 Land Use Master Plan.

1.2 The fact that a term, provision, or condition is not set forth herein does not mean that it is not an intended term, provision, or condition; however, any terms not included herein will be agreed to by mutual consent of the Developer and the City Manager. Further, all agreements referenced below are subject to approval of both the Developer and the City. Completed execution and recording of an Owner's Acknowledgement and Acceptance Agreement, as defined herein, shall constitute a condition precedent to proceeding with the Project.

1.3 Developer shall provide any entity which may acquire an interest in the Project Property, or any aspect of the Project, a copy of these MBTs and any OAA resulting from these MBTs, the provision of which shall put such entity on notice of the provisions contained herein, including but not limited to the City's right to terminate and repurchase the Project Property as set forth in Section 8 hereof.

1.4 Capitalized words herein have the definitions set forth herein.

2. DEFINITIONS

2.1 Affordable (or Affordability) –

Affordable (or **Affordability**) as used herein has the meaning set forth in this Section.

Except as provided in Subsection 2.1.1 below, ninety percent (90%) of all residential units within the Project shall be available for Seniors and individuals with Intellectual Disabilities and/or Developmental Disabilities who have incomes between 31-60% of the Area Median Income (AMI) for the Minimum Affordability Period.

Except as provided in Subsection 2.1.1 below, ten percent (10%) of all units within the Project shall be available for Seniors and individuals with Intellectual Disabilities and/or Developmental Disabilities who have incomes up to 30% of the AMI for the Minimum Affordability Period.

2.1.1 An on-site Property Manager may reside in one of the residential units of the Project.

The foregoing Affordability thresholds shall be subject to revision approved in writing by the City Manager upon written request of the Developer demonstrating that implementation of the above percentages is not permitted under new regulations or laws.

Upon written request of the Developer demonstrating to the satisfaction of the City Manager that implementation of the above percentages has resulted in a lack of eligible

applicants, the City Council may, by resolution, approve a temporary revision of the Affordability requirements set forth herein.

- 2.2 **Annual Report** – Annual Report has the meaning set forth in Section 5 hereof.
- 2.3 **Area Median Income (AMI)** - Maximum annual income limits as reported by the most recent Illinois Housing Development Authority, or any successor agency, for the Chicago Metropolitan Statistical Area (which includes DuPage and Will Counties), adjusted for household size.
- 2.4 **City of Naperville Residents** - City of Naperville Residents has the meaning set forth in Section 4.1.3 hereof.
- 2.5 **Closing** – Closing means Financial Closing and conveyance of the Project Property to the Developer as provided herein.
- 2.6 **Construction Phasing Plan** – A document detailing the timing of installation of required Project infrastructure, vertical building construction, parking, exterior site/landscape amenities, and location and screening of refuse receptacles.
- 2.7 **Construction Start Date** – the Construction Start Date for the Project means the date upon which: (i) a site permit has been issued by the City for the Project Property; and (ii) sufficient work has been completed such that the Developer has requested its first City inspection.
- 2.8 **Conveyance Agreement** – the Conveyance Agreement shall set forth the terms and conditions related to conveyance of the Project Property to the Developer at Closing.
- 2.9 **Deed** – means the quit claim deed by which the City will convey the Project Property to the Developer.
- 2.10 **Developer** – _____.
- 2.11 **Financial Closing** – Financial Closing means that the Developer has obtained all necessary signatures, made all required disclosures, and has collected and disbursed all monies necessary in order for title to the Project Property to be transferred to Developer and/or for Developer to execute a mortgage therefor.
- 2.12 **IDD Residents** – IDD Residents for the purposes of this Agreement means individuals with Intellectual Disabilities and/or Developmental Disabilities who are eighteen (18) years of age and older.
- 2.13 **Individuals with Intellectual and/or Developmental Disabilities** - Individuals with Intellectual and/or Developmental Disabilities have intellectual or development disabilities that begin before the age of 22. Intellectual disabilities are characterized by significant limitations in both intellectual functioning and in adaptive behavior.

Intellectual functioning, also called intelligence, refers to general mental capacity including but not limited to learning, reasoning, and problem solving. Adaptive behavior is the collection of conceptual, social, and practical skills that are learned and performed by people in their everyday lives. Developmental disabilities are a group of conditions due to an impairment in physical, learning, language, or behavior areas. These conditions may impact day-to-day functioning and usually last throughout a person's lifetime.

2.14 Minimum Affordability Period – Minimum Affordability Period has the meaning set forth in Section 1 hereof.

2.15 Owner's Acknowledgement and Acceptance Agreement for an Affordable Senior and IDD Housing Project ("OAA") – has the meaning set forth in Section 6 hereof.

2.16 Petition for Development Approval - The standard petition identifying requested entitlements which is used by the City of Naperville for development of real property, including but not limited to ownership and legal descriptions, plan submittals, reports and other documents.

2.17 Primary Residence - Primary Residence for the purpose of Section 4.1.3 of these MBTs is defined as residency which is evidenced by means of an Illinois Driver's License or Illinois State ID plus two (2) of the documents listed in the Illinois Secretary of State's Office Real ID program in "Group 3: Residency" as that list may be amended from time to time, and such other documentation as determined by the Developer, or Developer's designee, as credible.

2.18 Project – the Project is the development which is the subject of these Major Business Terms. Developer may structure development of the Project Property in such a manner that these Major Business Terms may be met, including but not limited to seeking necessary waivers, variances, and/or approvals from IHDA, the City, and any other entities necessary to approve and/or fund the Project.

2.19 Project Components – the Project Components are the required components of the Project generally described in Section 4 hereof.

2.20 Project Property – the 6.1 acres of real property delineated on Exhibit A hereto as may be modified by agreement of the Developer and the City as reflected in the OAA.

2.21 Purchase Price – the amount paid by the Developer for the Project Property as set forth in Section 7.1 hereof.

2.22 Residents – Residents are the Senior Residents and IDD Residents who rent units within the Project.

2.23 Resident Transportation Plan – Resident Transportation Plan has the meaning set forth in Section 4.8 hereof.

2.24 **Senior Residents** – Senior Residents for the purposes of this Agreement means individuals who are sixty-two (62) years of age or older.

3. PROJECT MILESTONES

The foregoing following dates are subject to written modification by agreement of the Developer and the City Manager due to circumstances which they determine warrant such change.

3.1 **On or before July 30, 2022** City will obtain and provide Developer with a Phase 1 environmental site assessment of the City Property which includes the Project Property.

3.2 **On or before October of 2022 [anticipated date]** Developer will apply for LIHTC funding for the Project at the next available 9% application period following approval and execution of these Major Business Terms.

3.3 **On or before December 31, 2022** Developer shall submit a Petition for Development Approval to the to the City's Transportation, Engineering, and Planning Development Business Group (T.E.D.). Such Petition will also require City signature as current owner of the Project Property. The City Zoning Administrator shall issue a letter: (i) verifying that the City has received Developer's Petition for Development Approval; and (ii) setting forth the process by which it is anticipated that the Developer will finalize Project Property zoning and subdivision entitlements.

3.4 **On or before August of 2023** Developer and City shall finalize an Owner's Acknowledgement and Acceptance Agreement for Affordable Senior and IDD Housing ("OAA") as described in Section 6 hereof.

3.5 **On or before August or September of 2023** City Council will consider, and may approve, Developer's Petition for Development Approval (i.e. all requested zoning entitlements and subdivision requests including the OAA signed by the Developer) and the Conveyance Agreement.

3.5.1 The Project entitlements, including all ordinances and the OAA, the Purchase and Sale Agreement, and the Deed conveying the Project Property to the Developer, shall be deposited in escrow prior to Closing with escrow instructions to the Escrow Agent, including but not limited to payment instruction and order of recording.

3.6 **Developer Finance Commitments** - In a form and detail deemed satisfactory to the City's Finance Director:

3.6.1 **On or before November 30, 2023** Developer shall demonstrate to the satisfaction of the City Finance Director that it has obtained preliminary funding commitments sufficient to cover all construction and related costs for the Project, and for its operation thereafter.

3.6.2 **On or before June 30, 2024** Developer shall demonstrate to the satisfaction of the City Finance Director that it has that it has obtained final commitments sufficient to cover all construction and related costs for the Project, and for its operation thereafter. (“**Final Commitments**”)

3.7 **On or before June 30, 2024** - Closing shall occur within ninety (90) days of demonstration of Final Commitments as set forth in Section 3.6.2 above (June 30, 2024 or earlier). At Closing the City shall convey the Project Property to the Developer by a quit claim deed which shall contain a deed restriction incorporating the terms and conditions of the OAA which OAA shall be an exhibit to the deed.

3.8 **Within thirty (30) days of Closing**, Developer shall commence construction (defined herein as the Construction Start Date) of the Project and shall complete construction of the Project within the Project Timeline set forth in in the OAA in accordance with any and all required City, Will County, and State permits.

3.9 **Within eighteen (18) months** of the Construction Start Date, construction of the Project shall be complete and final occupancy permits for all residential units in the Project shall be issued.

3.10 **Within 12 months of completion of construction and issuance of final occupancy permits as set forth in Section 3.9 above**, Developer shall complete leasing the Senior and IDD residential rental units. Each lease shall clearly reference: (i) the age restriction for Senior Residents; (ii) the age restriction and eligibility requirements for IDD Residents; (iii) the Affordability requirements; (iv) the date when the Minimum Affordability Period may expire; and (v) the recording number of the Deed and the OAA with an explanation that the OAA contains details regarding the Project and allows for enforcement of its provisions by third parties, including the Residents.

4. PROJECT COMPONENTS

Developer proposes to develop, design, construct, and operate the Project for the Minimum Affordability Period noted in Section 1 above. The Project will include the components listed in this Section 4 to be provided by Developer at Developer’s cost as follows:

4.1 Tenant Mix and Resident Preference.

4.1.1 Affordable Senior and IDD rental housing containing no less than sixty (60) residential dwelling units that shall remain Affordable for the Minimum Affordability Period.

4.1.2 Twenty-five percent (25%) of all residential rental units in the Project, (or such higher percentage as may be allowed by applicable law and approval by the Illinois Department of Human Services (DHS), Illinois Housing Development Authority and the U.S. Department of Housing and Urban Development), shall be allocated to IDD Residents who are age eighteen (18) years of age and older.

4.1.3 Subject to approval by IHDA and HUD, Developer shall at all times prioritize rental of dwelling units within the Project for individuals whose Primary Residence has been the City of Naperville for twelve (12) consecutive months preceding their application and for their

immediate family members (defined as children, parents, or siblings) irrespective of Primary Residence.

4.2 Parking. Parking spaces shall be provided to accommodate Project Residents and employees and visitors of the Project in accordance with the Naperville Municipal Code. Any reductions to the required parking ratios as set forth in the Naperville Municipal Code shall require approval by the Naperville City Council. Consideration should be given to the need for additional accessible spaces to meet the unique requirements of Project Residents.

4.3 Outdoor Amenities. The Project shall maintain outdoor amenities which comprise at least 20%, or 1.22 acres, of the Project Property, including but not limited to:

- 4.3.1 Trails, with amenities providing respite areas for those with limited mobility and endurance (with areas of shade and sun), and pet-friendly features.
- 4.3.2 Conveniently located picnic/grilling and fire pit/outdoor gathering areas.
- 4.3.3 Gardens – including raised planting bed features.
- 4.3.4 Combination of manicured and natural areas.
- 4.3.5 Pickleball courts or other amenity as requested by the majority of stakeholders during the planning process.
- 4.3.6 Pet area for animal therapy.
- 4.3.7 Club house or club room which offers outdoor seating, dining, and courtyard activities.

4.4 Indoor Amenities. The Project shall maintain indoor amenities, including but not limited to:

- 4.4.1 Conveniences, including but not limited to laundry and refuse facilities on each floor that has residential units.
- 4.4.2 Formal and informal Resident gathering and meeting spaces of varying sizes to accommodate concurrent activities and lifestyle choices and to accommodate visitors.
- 4.4.3 Technology accessible classrooms and/or computer labs.
- 4.4.4 Exercise space and facilities such as a fitness area with weight and cardio machines (with focus on safety and equipment usage signage), and a group fitness class area.
- 4.4.5 Community kitchen for resident use.
- 4.4.6 Mail room.
- 4.4.7 On-site wi-fi.
- 4.4.8 Cable ready units throughout the Project and a master antenna to access local channels.
- 4.4.9 Office spaces for use of Resident service providers.

4.5 Sustainability. Utilize environmentally-friendly and sustainable construction materials and design practices, aligned with a recognized national program with goals for

sustainable excellence such as LEED, Energy Star, Enterprise Green Community, which may include a combination of:

- 4.5.1 Utilization of renewable energy sources.
 - 4.5.2 Electric vehicle charging facilities.
 - 4.5.3 All-electric unit appliances.
 - 4.5.4 Diversion of construction waste from landfills and incinerators.
 - 4.5.5 Stormwater Management.
 - 4.5.6 Open space preservation and native landscaping.
 - 4.5.7 Composting.
- 4.6 **Accessibility.** A commitment to accessibility through application of the Illinois Accessible Code, AARP recommendations, and universal design approaches to consider sensory, cognitive and physical impairments. At a minimum the Project shall include:
- 4.6.1 Not less than ten percent (10%) of all residential units in the Project shall be constructed as Type A units in accord with the ANSI Standard ICC A117.1 in Chapter 11 of the International Building Code 2018 (IBC 2018).
 - 4.6.2 All units to include universal design features (e.g. lever door handles, rocker light switches, look handles on doors and drawers (no knobs), grab bars and non-skid surfaces in bathrooms, handheld shower heads, side-by-side refrigerators, front controls on all appliances, etc.).
 - 4.6.3 Consistent and vibrant lighting to make discerning contrasting materials easier to identify for visually impaired.
 - 4.6.4 Front loading washers and dryers on raised platforms in all laundry areas.
- 4.7 **Quality design:** (i) that is compliant with the Naperville Municipal Code and adopted regulations then in effect (unless variances are approved), including but not limited to bulk limitations; and (ii) which reflects the character and context of residential development in the general vicinity with respect to scale, style, height, and exterior finishes.
- 4.8 **Transportation.** Project Residents will have unique transportation needs that must be addressed through a combination of design features (e.g., covered loading/unloading areas, areas for bicycle parking and storage, provisions for accessible parking beyond minimum standards) and also a plan for providing transportation services for both IDD Residents and Senior Residents who do not have access to, or who are unable to, drive personal vehicles. Transportation services need to be regular, convenient, meet basic service needs (e.g., medical appointments, grocery shopping, cultural events, etc.) and be provided either free of charge or at a reasonable cost.

While public transportation options will be available to some extent, the Developer will provide a plan to demonstrate how transportation services for both Senior Residents of the Project and IDD Residents of the Project will be provided. Those measures will be

included as part of an overall **Resident Transportation Plan** which will be approved by the City and attached as an exhibit to the OAA.

4.9 Infrastructure Improvements (to be completed by the Developer and accepted by the City by dates approved in writing by the City).

- 4.9.1 Stormwater management will need to be provided for the Project Property in a manner that will not negatively affect the detention volume currently serving the adjacent Wheatland Township Facility. Developer must provide stormwater storage for both the Project Property and 1.99 acre feet which represents storage for upstream properties and shall not charge for said 1.99 acre feet of storage.
- 4.9.2 Developer will be responsible for the cost to extend the electric utility from Illinois Route 59 and to the Project Property. The Developer will be entitled to a recapture agreement for the actual costs of extending utilities from other benefitting properties as those properties develop, as other benefitting properties are identified the Department of Public Utilities-Electric. The estimated cost to extend the electric utility service to the Project Property is \$250,000.
- 4.9.3 Developer will be obligated to pay recapture amounts required for Watermain and Sanitary Sewer to Wheatland Township; and pay a recapture to the City for the wastewater pump station and force main. Recapture costs shall be specified in the OAA.
- 4.9.4 Developer will be responsible to construct the sidewalk extension along Tower Drive to 103rd Street. A timeframe for construction will be agreed upon by the Developer and the City.

4.10 Services for Senior Residents and IDD Residents

- 4.10.1 Senior Services shall be provided to assist Senior Residents with independent living needs (e.g. money management, assistance referrals, prescription assistances, benefit counseling, grocery shopping, transportation, etc.) and improvement of Residents' quality of life and sense of community connection (e.g. exercise programs, educational programs, crafting, cards/games, social events, volunteer opportunities, etc.).
- 4.10.2 IDD Services shall be customized to provide for the needs of IDD Residents ranging from limited assistance for independent living (e.g. prescription management, light housekeeping, budgeting, etc.) to wrap-around case management, and improvement of Residents' quality of life and sense of community connection (e.g. exercise programs, educational programs, crafting, cards/games, social events, volunteer opportunities, etc.).
- 4.10.3 Transportation services shall be provided in conformance with a Resident Transportation Plan as set forth in Section 4.8 hereof.

5. ANNUAL REPORT

Developer shall provide the City Manager with an Annual Report in January of each year the Minimum Affordability Period is in effect in an electronic format setting forth the following information for Senior Residents and IDD Residents separately:

- 5.10.1 Occupancy numbers of for the past calendar year delineating types of residency as described in Paragraph 4.1 hereof.
- 5.10.2 Waitlist numbers at the end of the calendar year.
- 5.10.3 A detailed description of transportation services in conformance with the Resident Transportation Plan described in Section 4.8 above.
- 5.10.4 Data regarding implementation of the Resident Transportation Plan, Resident usage, and any new or additional transportation options.
- 5.10.5 On-site program offerings (including but not limited to the services outlined in paragraph 4.10.1 and 4.10.2 above).
- 5.10.6 Current and newly added amenities and facilities including but not limited to picnic, gardening, trail, classrooms, recreational facilities, equipment, and computers.
- 5.10.7 A description of the number and type of personnel (i.e. their status either as full time, part time, or contractual) who have provided the activities, programming, and training described above and the extent to which said activities, programming and training were utilized.
- 5.10.8 Coordination with area service providers to meet Resident needs.
- 5.10.9 New, discontinued, and modified services since the prior reporting period.

It is anticipated that services may change over time as technology, Resident interest, and program availability changes. The Annual Report will provide transparency regarding changes.

6. OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT ("OAA").

6.1 An OAA shall be finalized and attached as an exhibit to the ordinance approved by the Naperville City Council approving subdivision of the Project Property. A fully executed OAA shall also be separately recorded with the Will County Recorder. The OAA shall contain, but shall not be limited to, the Major Business Terms set forth herein and other terms and provisions including but not limited to:

- 6.1.1 The Project Milestones described in Section 3 hereof.
- 6.1.2 The Minimum Affordability Period for the Project set forth in Section 1 hereof.
- 6.1.3 The total number of Senior Resident rental units.

- 6.1.4 The total number of IDD Resident rental units (not less than 25% of all units).
- 6.1.5 A legal description and depiction of the Project Property.
- 6.1.6 The Project site plan.
- 6.1.7 Project building elevations and materials.
- 6.1.8 A description of the phasing of the Project (“**Project Timeline**”).
- 6.1.9 Final engineering for the Project plans.
- 6.1.10 Engineer’s Opinion of Probable Construction Cost (“EOPC”).
- 6.1.11 Final landscaping plans.
- 6.1.12 Final photometric plan.
- 6.1.13 A trip-generation report.
- 6.1.14 A stormwater management report.
- 6.1.15 Final Parking Plan.
- 6.1.16 Other plans, studies, or reports reasonably requested by the City.
- 6.1.17 Surety for public improvements to be provided by the Developer to the City in an amount approved by the City Engineer and in a form approved by the City Attorney.
- 6.1.18 Each of the Project Components set forth in Section 4 hereof.
- 6.1.19 Reservation by the City of a cross-access easement on the Project Property to connect the Project Property to property to the west - dependent on Developer’s site plan. Public utility and drainage easements will also be reserved.
- 6.1.20 A provision that the City of Naperville will seek approval from the Illinois Department of Transportation (IDOT) to construct an access point to Illinois Route 59 that will provide access to and from the Project Property and other properties. It is anticipated that the project will include design and construction of a left turn lane, right deceleration lane, and access point by the City of Naperville. A two-way vehicular roadway between the new Illinois Route 59 access and the Project Property shall also be designed and constructed by the City.
- 6.1.21 A requirement of timely payment by the Developer of all required City of Naperville and applicable County and State application, plan review, permit, and inspection fees.
- 6.1.22 The Purchase Price for the Project Property as set forth in Section 7.1 hereof.
- 6.1.23 The City’s rights to repurchase the Project Property as set forth in Section 8 hereof.

- 6.1.24 Binding Effect /No Assignment. A provision that for the Minimum Affordability Period the OAA will be binding upon the Developer and all successors, assigns, and transferees, including but not limited to beneficial and legal owners. The Project and the OAA shall not be assigned or transferred by the Developer in whole or in part (or any successor to the Developer) to any other entity or person without the prior written consent of the City except as provided in Section 10.1 hereof.
- 6.1.25 A provision that Residents of the Project are third-party beneficiaries of the provisions of the OAA.
- 6.1.26 A provision that the City and the Developer shall each be responsible for their own legal fees for all aspects pertaining or associated with the Project, including but not limited to these Major Business Terms, the design and development of the Project Property, entitlements, and the negotiation of the OAA.
- 6.1.27 A provision requiring Illinois choice of law and venue in the Eighteenth Judicial District.
- 6.1.28 A provision indicating whether the Illinois Prevailing Wage Act shall be applicable to the Project.
- 6.1.29 A provision that the Developer will defend and indemnify the City and its officers, agents, and employees for any aspect of the design, construction, and operation of the Project and as a result of any Developer breach of the OAA.
- 6.1.30 Provisions related to breach of the terms of the OAA, opportunity to cure, no waiver of successive breaches, the right of the parties to take any actions they deem appropriate to enforce the agreement, including but not limited to remedies at law and/or in equity, including but not limited to injunctive relief, specific performance, and agreed upon consequential damages for certain breaches, and a provision requiring the Developer to pay attorneys' fees and costs in the event of litigation between the parties in which the City prevails as determined by a court of competent jurisdiction. A Conveyance Agreement shall be finalized and attached as an exhibit to the OAA.
- 6.1.31 School and Park Donation Requirements:
- 6.1.31.1 School Donation. A school donation shall be required under the land-cash provisions set forth in Section 7-3-5 of Naperville Municipal Code, as amended from time to time, as negotiated by the Developer with School District #204 and approved by the City.
- 6.1.31.2 Park Donation. The Developer shall be required to pay a park donation under the land-cash provisions set forth in Section 7-3-5 of Naperville Municipal Code, as amended from time to time, except that, upon request of the Developer, and as provided in Section 7-3-5, the Park District may accept a reduction in the Park District land-cash

donation subject to provision of certain indoor and outdoor amenities by the Developer.

6.1.32 If the City has adopted an affordable housing and incentive ordinance (“AHIP”) prior to finalization of the OAA, the City and the Developer will work together to determine how and if the AHIP provisions may be incorporated into the entitlement process for the Project.

6.1.33 Upon approval by the City and the Developer, the OAA shall be fully executed; however, it shall provide that it shall not take effect until the day after the Project Property has been conveyed to the Developer by the City.

7. PURCHASE PRICE OF PROJECT PROPERTY

7.1 In consideration of Developer’s design and construction of the Project, operation of the Project throughout the Minimum Affordability Period in compliance with the OAA which includes the Project Components described herein and the remaining terms and conditions set forth and referenced herein, the Developer agrees to pay, and the City agrees to accept, a Purchase Price of \$_____ for the Project Property.

8. TERMINATION AND CITY’S RIGHT TO REPURCHASE

8.1 If the Developer has not begun construction (achieved the Construction Start Date) of the Project on the Project Property within three (3) years of the Effective Date of the OAA, the City shall have the right, but not the obligation, to terminate the OAA and repurchase the Project Property (and any improvements thereon) at the Purchase Price within sixty (60) days of written notification to the Developer of the City’s decision to terminate the OAA and to exercise said right. Such notice shall be given at to the Developer at the address set forth in Section 11 hereof.

8.2 Except as provided in Section 8.1 above, and in addition thereto, in the event of any default under or violation of these MBTs or any OAA resulting from these MBTs, including but not limited to the Project Milestones, the party not in default or violation shall serve written notice upon the party in default or violation, which notice shall be in writing and shall specify the particular default or violation. The parties reserve the right to cure any violation of or default within thirty (30) days following written notice thereof. If such default is cured within said thirty (30) day period, all terms and conditions of these MBTs, or the OAA as applicable, shall remain in full force and effect. If a party cannot cure a default or violation within said thirty (30) day period, then the other party shall grant a reasonable extension of the cure period, said extension not to exceed ninety (90) days, provided that the party in default or violation is diligently pursuing completion and/or cure and tenders proof of such diligence to the non-defaulting party. The non-defaulting party may, at its sole discretion, grant such additional extensions beyond the aforementioned ninety (90) day extension period as may, in the sole discretion of the non-defaulting party, be reasonably necessary to cure said default. The foregoing period(s) of time shall be referenced in this Section 8 as the “**Cure Period**”.

8.2.1 If the Developer is unable to obtain funding commitments as set forth in Section 3.6 above, and needs additional time to secure such funding such that the above-

described Cure Period is not achievable, the Developer shall the notify the City to that effect, and the parties shall agree upon a revised Project Milestone schedule and Cure Period. Nothing herein shall require the City to approve a second extension on this basis.

8.3 In addition to the provisions set forth above, either party hereto may terminate these MBTs or any OAA resulting from these MBTs, if the other party fails to cure a default during the Cure Period provided in Section 8.1 or 8.2.1 above by giving written notice (“**Notice of Default**”) to the other party. If the City terminates the OAA as a result of one or more Material Defaults by the Developer, as defined below, the City shall provide notice of termination (“**Notice of Termination**”) to the Developer and shall have the right, but not the obligation, to repurchase the Project Property, and any improvements thereon, at the Purchase Price and shall notify the Developer of its intent to repurchase simultaneously with its Notice of Termination.

A material default (“**Material Default**”) for the purposes of this section shall include (after expiration of the Cure Period): (i) failure to comply with any of the Project Milestones; (ii) failure to provide Affordable residential units to Senior Residents and IDD Residents during the Minimum Affordability Period without an amendment of the OAA; (iii) failure to implement and utilize a tenant selection process in accord with the OAA; (iv) Developer’s making an assignment for the benefit of creditors or filing a petition in any court in bankruptcy, reorganization, composition, or makes an application in any such proceedings for the appointment of a trustee or receiver for all or any part of the Project and/or Project Property; or (v) a petition is filed against the Developer in any bankruptcy, reorganization, or insolvency proceedings, and said proceedings are not dismissed or vacated within one hundred and twenty (120) days after such petition is filed.

8.3.1 Repurchase of the Project Property, and any improvements thereon, by the City at the Purchase Price agreed upon in these MBTs and/or the OAA shall be finalized within ninety (90) days of Developer’s receipt of a Notice of Termination which Notice indicates the City’s decision to exercise its right to repurchase.

8.4 Nothing in this section or in these MBTs precludes the City from requiring compliance with provisions of these MBTs or the OAA which results from these MBTs which are not listed above in the Material Default provisions.

8.5 The City shall be entitled to reimbursement for its attorneys’ fees and costs from the Developer, whether in-house or retained outside counsel, plus interest at an agreed upon rate, for enforcement of the provisions contained in this Section 8, and each subsection hereof, which reimbursement shall occur within sixty (60) days of issuance of notice therefor.

9. CONVEYANCE OF PROJECT PROPERTY

9.1 As set forth in Section 3.7 hereof, within sixty (60) days receipt of documentation sufficient to support Developer’s financial ability to construct and operate the Project, or such other timeframe as may be agreed to in writing by the Developer and the City Manager, the City shall convey the Project Property to the Developer for the Purchase Price set forth in Section 7.1. Such conveyance shall be by quit claim deed pursuant to

the provisions of the Conveyance Agreement approved in the OAA which OAA shall have been recorded, with the City's entitlement ordinances, prior to conveyance.

10. RESYNDICATION AND CONVEYANCE.

10.1 During the Minimum Affordability Period the City does not object to the Project being resyndicated, as provided for in 26 U.S.C §42, and conveyed to replacement developers so long as tenant income grandfathering is allowed to the extent permitted by law and subject to continued compliance with the requirements of the OAA. Developer agrees not to convey its interest in the Project until after expiration of the initial LIHTC compliance period (15 years) unless otherwise approved by resolution of the City Council.

11. ADDRESSES FOR NOTICES HEREUNDER.

IF TO THE CITY:

City Manager
City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

WITH COPIES TO:

City Attorney, City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

IF TO THE DEVELOPER:

WITH COPIES TO:

/SIGNATURES ON FOLLOWING PAGES/

DEVELOPER/ _____

[Signature]

[Printed name]

[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by _____ this ____
_____ day of _____ 2022.

Notary Public

Print Name

Given under my hand and official seal this ____ day of _____, 2022.

-Seal-

Notary Public
My Commission Expires: _____

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

By: _____
Pam Gallahue, Ph.D.
City Clerk

Date: _____