

**PROPERTY ADDRESS:  
VACANT LAND ATAUDREY AVENUE  
AND ROUTE 59  
NAPERVILLE, IL 60540**

**P.I.N.: 07-27-103-008**

**[Subject to City Council Approval]**

**RETURN TO/PREPARED BY:  
CITY CLERK'S OFFICE  
400 SOUTH EAGLE STREET  
NAPERVILLE, IL 60540**

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT  
FOR AUDREY SENIOR LIVING SUBDIVISION**

This Owner's Acknowledgement and Acceptance Agreement ("**Agreement**") is entered into by and between the City of Naperville, a home rule unit of local government under the Constitution and laws of the State of Illinois ("**City**" or "**City of Naperville**"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE TO NORTH STAR TRUST COMPANY, AS TRUSTEE UNDER A CERTAIN TRUST AGREEMENT DATED MAY 26, 2011 AND KNOWN AS TRUST NUMBER 11-12331 ("**CHICAGO TITLE TRUST**"), with an address of 28W037 Robin Lane, Northwoods, Illinois 60185, and Ryan Companies US, Inc., a Minnesota corporation, with an address of 700 Oakmont Lane, Sute 100, Westmont Illinois 60559 ("**RYAN**"). The City, CHICAGO TITLE TRUST, and RYAN are together hereinafter referred to as the "**Parties**" and sometimes individually as "**Party**".

**RECITALS**

A. This Agreement pertains to certain real property located within the corporate limits of the City of Naperville legally described on **Exhibit A** and depicted on **Exhibit B** (hereinafter referred as the "**SUBJECT PROPERTY**").

B. Pursuant to approval of a Preliminary/Final Plat of Subdivision for Audrey Senior Living Subdivision by the Naperville City Council on May 16, 2023, the SUBJECT PROPERTY is comprised of two (2) lots; Lot 1 ("**Lot 1**") and Lot 2 ("**Lot 2**"), which are owned by CHICAGO TITLE TRUST. RYAN is the contract purchaser and developer of Lot 1.

C. Lot 1 is approximately 4.564 acres in size and will be developed by RYAN with an approximately 175-unit convalescent home community ("**Community**"). The Community residents shall reside in a single structure located on Lot 1 ("**Community Structure**"). An Age Restriction Covenant, as defined in Section 3.2 hereof ("**Age Restriction Covenant**"), shall apply to Lot 1.

Lot 2 is approximately 1.654 acres in size and will remain vacant at this time and retained by CHICAGO TITLE TRUST.

D. In addition to subdivision of the SUBJECT PROPERTY, the following entitlements were also approved by the Naperville City Council on May 16, 2023 for Lot 1 of the SUBJECT PROPERTY as follows:

- (i) rezoning Lot 1 from B2 (Community Shopping Center District) to OCI (Office, Commercial and Institutional) District; (Note: Lot 2 shall remain zoned B2);
- (ii) a conditional use for a convalescent home in OCI on Lot 1;
- (iii) a variance for building height for a structure to be located on Lot 1;
- (iv) a variance to allow location of a parking lot in the front yard of Lot 1;
- (v) a variance for off-premises signage for Lot 1 to advertise Lot 1 to be located on Lot 2; and
- (vi) a variance to the landscaping code for Lot 1.

E. By entering into this Agreement, the City is acting pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

**NOW THEREFORE**, in consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.
2. **Ongoing Compliance.** In the development and operation of the SUBJECT PROPERTY, CHICAGO TITLE TRUST and RYAN shall be subject to and shall fulfill all conditions set forth or referenced herein associated with the SUBJECT PROPERTY, including but not limited to: (i) the terms of this Agreement; (ii) the provisions of the Naperville Municipal Code, as amended from time to time; and (iii) all ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY. In addition, RYAN shall be subject to the requirements of the Age Restriction Covenant provisions set forth herein and the Age Restriction Covenant provided for attached hereto as **Exhibit C**.
3. **Development of the SUBJECT PROPERTY.**
  - 3.1 **Preliminary Engineering Plans.** RYAN submitted preliminary engineering plans prepared by Kimley Horn, dated November 4, 2022, last revised March 17, 2023 ("**Preliminary Engineering Plans**") for the Community and Community Structure to be constructed on Lot 1 of the SUBJECT PROPERTY. RYAN shall, at its sole cost, submit Final Engineering Plans ("**Final Engineering Plans**") that are in substantial conformance with the Preliminary Engineering Plans. RYAN shall

construct all improvements related to the development of Lot 1 in compliance with said Final Engineering Plans unless they are modified with the written approval of the City Engineer.

- 3.2 **Convalescent Home.** The Community Structure shall at all times be operated as a convalescent home as defined in Section 6-1-6 of the Naperville Municipal Code set forth below:

“Convalescent home: A building or structure which is used, designed or intended for the care of the aged or infirm, or for those suffering bodily disorders and which does not contain the facilities nor render the services normally associated with a hospital.”

- 3.3 **Age Restriction Covenant.** No resident of any dwelling unit within the Community Structure shall be under the age of sixty-two (62). RYAN shall cause the terms and conditions of the Age Restriction Covenant attached hereto as **Exhibit C** to be complied with at all times. No modification, amendment, or termination of said Age Restriction Covenant shall be valid without the prior written approval of the City and School District 204 and payment of any school and/or park donation fees that may be applicable.

#### 4. **School Donation.**

- 4.1 **Lot 1.** No land-cash school donation will be required for Lot 1 of the SUBJECT PROPERTY pursuant to Section 7-3-5:4.5 of the Naperville Municipal Code so long as Lot 1 is at all times operated in conformity with the Age Restriction Covenant as set forth and referenced herein. By virtue of establishing the Community as age restricted and accepting the benefits of such designation, RYAN and all successor owners, transferees, and assignees of Lot 1 of the SUBJECT PROPERTY waive any right to challenge the requirement to pay school donation fees in accord with the provisions of the Naperville Municipal Code then in effect upon: (i) amendment, revocation, or termination of the Age Restriction Covenant or any modification to the Age Restriction Covenant which allows for school-aged residents other than as permitted in said Covenant; or (ii) operation of all or any part of Lot 1 of the SUBJECT PROPERTY for any purpose other than as a Convalescent Home for residents who are 62 years of age or older.
- 4.2 **Lot 2.** Upon development of Lot 2, the land-cash school donation provisions then in effect in the Naperville Municipal Code shall apply to Lot 2.

**5. Park Donation.**

5.1 **Lot 1.** Based upon calculations set forth in Section 7-3-5 (Dedication of Park Lands and School Sites or For Payments or Fees In Lieu Of) of the Naperville Municipal Code, the Park Donation amount due for Lot 1 of the SUBJECT PROPERTY shall be \$417,185.12 in accordance with Table B, which is attached hereto as **Exhibit D** (the “**Park Donation**”).

5.1.1 RYAN has elected to pay the Park Donation pursuant to the “Per Permit” basis provisions set forth in Section 7-3-5:5.2.2 and Subsection 5:5.2.1.1 of the Naperville Municipal Code. RYAN agrees that said Park Donation shall not be paid under protest, or otherwise objected to. The per permit fee Park Donation shall be updated pursuant to any amended formula if the formula is amended by the City prior to issuance of the building permit for the Community Structure, shall be paid for all 175 dwelling units at the time the initial building permit is issued. Notwithstanding the foregoing, if RYAN and the Naperville Park District come to an agreement pursuant to Section 7-3-5:2.1.1 of the City Code, RYAN may seek approval of the City Council of that agreement in lieu of the amount stated above.

5.1.2 RYAN acknowledges that the Park Donation established herein will be verified at the time of issuance of the building permit for the Community Structure. If the number of bedrooms in the Community Structure increases, then the permit applicant shall be charged for additional bedrooms, in accordance with the park donation table contained in the Naperville Municipal Code in effect at the time the building permit for the Community Structure is issued.

5.1.3 RYAN, and all owners, transferees, and assignees of Lot 1 of the SUBJECT PROPERTY waive any right to challenge the requirement to pay any additional park donation fees that may be assessed by the City and due in accord with the provisions of the Naperville Municipal Code then in effect upon: (i) revocation or termination of the Age Restriction Covenant or any modification to the Age Restriction Covenant which increases the park donation due as set forth in the Naperville Municipal Code then in effect; or upon (ii) operation of all or any part of Lot 1 of the SUBJECT PROPERTY for any residential purpose other than for the age restricted purpose described and referenced herein and the Age Restriction Covenant.

5.2 **Lot 2.** Upon development of Lot 2 of the SUBJECT PROPERTY, the land-cash park donation provisions then in effect in the Naperville Municipal Code shall apply to Lot 2.

**6. Recapture Fees Due.**

- 6.1 **Lot 1.** RYAN shall pay the following recapture fees to the City prior to the recordation of the Preliminary/Final Plat of Subdivision:
- 6.1.1. **Water & Sanitary Sewer:** A combined water and sanitary sewer recapture fee of \$120,174.81 (based on 702.9 feet of Audrey Avenue frontage).
- 6.1.2. **Road Recapture Fee:** A roadway recapture fee of \$246,015.00 for Audrey Lane (based on \$350 per linear foot on 702.9 feet of Audrey Avenue frontage).
- 6.1.3. The Recapture Fees set forth above may be increased by the City of based on a CPI inflation calculator if the Preliminary/Final or Final Plat of Subdivision is not recorded within two (2) years.
- 6.2 **Lot 2.** Recapture fees will be assessed for Lot 2 at the time Lot 2 is developed.

**7. Fees Due.**

- 7.1 **Lot 1.** RYAN shall pay all fees (which fees shall not be paid under protest or otherwise objected to) set forth herein and required by the Naperville Municipal Code as amended from time to time, including but not limited to the following:
- 7.1.1 **Site Permit Fee:** 1.65% of the approved engineer's cost estimate.
- 7.1.2 **Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the City's water or sanitary system, RYAN shall pay for all infrastructure availability charges and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to Lot 1 of the SUBJECT PROPERTY for which connection and service is requested.
- 7.1.3 **Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, the RYAN shall pay for all Facility Installation Charges (FIC) and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to Lot 1 of the SUBJECT PROPERTY for which connection and service is requested.

- 7.1.4 **Future Pavement Restoration Fee.** RYAN shall pay a future pavement restoration fee if applying for a Right-of-Way permit related to pavement work or disturbance in Audrey Avenue applicable to Lot 1 of the SUBJECT PROPERTY in accordance with the requirements of Section 9-1J-5 (Future Pavement Restoration Fee) of the Naperville Municipal Code.
- 7.2 **Lot 2.** CHICAGO TITLE TRUST shall pay all fees (which fees shall not be paid under protest or otherwise objected to) referenced herein upon the development of Lot 2 and required by the Naperville Municipal Code as amended from time to time.
8. **Financial Surety.** Financial surety in a form and from a source acceptable to the City Attorney shall be provided and maintained in the amount of 110% of the approved engineer's cost estimate which guarantees the completion of public improvements and soil erosion and sedimentation control for Lot 1 and Lot 2 of the SUBJECT PROPERTY ("**Public Improvements**"). Financial surety shall be received and approved prior to and as a condition to the issuance of a site development permit for the development of Lot 1 and Lot 2, respectively. Notwithstanding provision of said surety, until the Public Improvements have been accepted by the City, RYAN (for Lot 1) and CHICAGO TITLE AND TRUST (for Lot 2) shall remain obligated for completion of said Public Improvements and/or (at the City's sole discretion) to pay any costs for said Public Improvements to the extent that the surety is not sufficient to pay for the costs of the Public Improvements, or in the event of any denial, or partial denial of coverage by the surety, or failure of the surety to timely respond to a demand for payment. Prior to acceptance of the Public Improvements by the City, the RYAN (for Lot 1) and CHICAGO TITLE TRUST (for Lot 2) shall provide the City with a maintenance surety for the Public Improvements in a form approved by the City Attorney and in conformity with the Naperville Municipal Code then in effect.

As to any surety, or maintenance surety, provided by the CHICAGO TITLE TRUST (for Lot 2) or by RYAN (for Lot 1) to the City hereunder, CHICAGO TITLE TRUST AND RYAN agree that: (1) at no time shall the City be liable for attorneys' fees with respect thereto; (2) CHICAGO TITLE TRUST AND RYAN shall be liable to pay the City's reasonable attorneys' fees and costs (in-house or outside counsel) in enforcement thereof; and (3) the list of circumstances set forth in such surety (including any exhibit thereto) as bases for default thereunder shall entitle the City to draw on said surety. Notwithstanding provision of said surety, until the public improvements have been accepted by the City, CHICAGO TITLE TRUST (for Lot 2) AND RYAN (for Lot 1) shall remain obligated for completion of said public improvements and/or (at the City's sole discretion) to pay any costs for said public improvements to the extent that the surety is not sufficient to pay for the costs of the public improvements, or in the event of any denial, or partial denial, of coverage by the surety, or failure of the surety to timely respond to a demand for payment.

## **9. Cross-Access Easements and Off-Premises Signage.**

### **9.1 Cross-Access Easement for adjacent properties to the north and south of the SUBJECT PROPERTY.**

Prior to recordation of the Preliminary/Final Plat of Subdivision, RYAN shall submit a written easement agreement (“**Easement Agreement**”) for review and approval by the City Engineer which grants a twenty-six foot (26’) wide cross-access easement on Lot 2 parallel to the Route 59 frontage of Lot 2 for the benefit of: (i) Outlot D of Mayfair Subdivision Phase 2 – Unit 2 which subdivision is recorded as document number 2014-044130; and (ii) Lot 1 of Barbarotta’s Subdivision which subdivision is recorded as document number R2002-355159; hereinafter the “**Cross-Access Easement**”. Said Easement Agreement shall be recorded simultaneously with recordation of the Preliminary/Final Plat of Subdivision.

Said Easement Agreement shall provide that it may not be modified, revoked, or terminated without the prior written approval of the City Engineer.

The Easement Agreement is noted as “26’ Cross-Access Easement per document number\_\_\_\_\_” on the Preliminary/Final Plat of Subdivision and the recording number of the Easement Agreement shall be added to the Preliminary/Final Plat of Subdivision at the time of recording.

The final location of said Cross-Access Easement, and the language granting said Cross-Access Easement (pursuant to the Easement Agreement) shall be subject to review and approval by the City Engineer.

**9.1.1 Cross-Access Driveway.** Prior to issuance of a site development permit for Lot 2, CHICAGO TITLE TRUST shall submit engineering plans depicting a twenty-six foot (26’) cross-access driveway (“**Cross-Access Driveway**”) to be located on the Cross-Access Easement described in Section 9.1 above which shall be subject to prior review and approval by the City Engineer. CHICAGO TITLE TRUST shall construct said Cross-Access Driveway, at its sole expense, in accordance with the City of Naperville Design Manual then in effect and the approved engineering plans unless said plans are modified with the written approval of the City Engineer. The completed Cross-Access Driveway shall be approved by the City Engineer prior to issuance of an occupancy permit for Lot 2.

**9.2 Cross-Access Easement Between Lot 1 and Lot 2.**

Prior to recordation of the Preliminary/Final Plat of Subdivision, RYAN shall submit a written easement agreement for a reciprocal cross-access easement (“**Reciprocal Cross-Access and Signage Easement Agreement**”) for review and approval by the City Engineer which grants an access easement on the west side of Lot 1 as depicted on the Preliminary/Final Plat of Subdivision and which grants a sign easement as discussed in Section 9.3 below.

The Reciprocal Cross-Access and Signage Easement Agreement is noted as “Cross-Access Easement per document number\_\_\_\_\_” on the Preliminary/Final Plat of Subdivision and the recording number of the Reciprocal Cross-Access and Signage Easement Agreement shall be added to the Preliminary/Final Plat of Subdivision at the time of recording.

9.2.1 The Reciprocal Cross-Access and Signage Easement Agreement shall provide, among other things, that an access driveway (“**Cross-Access Driveway**”) shall be constructed as set forth in Section 9.2.1 below which Cross-Access Driveway shall: (i) be continuously operated and maintained for the benefit of both Lot 1 and Lot 2; and (ii) shall grant the Lot 2 owner the right to enter on Lot 1 to construct the Cross-Access Driveway upon the development of Lot 2. The Reciprocal Cross-Access and Signage Easement Agreement shall also provide that: (iii) the final location of the Cross-Access Driveway on Lot 2 shall be determined by the Lot 2 owner and Lot 1 owner, subject to review and approval by the City Engineer; and (iv) said Reciprocal Cross-Access and Signage Easement Agreement may not be modified, revoked, or terminated without the prior written approval of the City Engineer.

9.2.2 **Construction of Lot 1/Lot 2 Cross-Access Driveway.** CHICAGO TITLE TRUST AND RYAN shall construct, at their sole expense, the Lot 1/Lot 2 Cross-Access Driveway within the parameters of the cross-access easement noted on the Preliminary/Final Plat of Subdivision at a location approved by the City Engineer and pursuant to engineering plans as approved by the City Engineer.

Said Cross-Access Driveway shall be constructed as provided above and pursuant to the provisions of the Reciprocal Cross-Access and Signage Easement Agreement, and Final Engineering Plans to be approved by the City Engineer, unless said Final Engineering Plans are modified with the written approval of the City Engineer.

The completed Lot 1/Lot 2 Cross-Access Drive shall be approved by the City Engineer prior to issuance of an occupancy permit for Lot 2, or such other timeframe as agreed to in writing by the City Engineer.



- 9.3 **Future Lot 2 Signage Rights.** A variance to allow for an off-premises shared ground sign to advertise Lot 1 and Lot 2 together, which sign shall be located on Lot 2 was approved by the City Council. Said shared sign (“**Shared Sign**”), which constitutes an off-premises sign for Lot 1, shall be permitted. The location of said Shared Sign shall be approved by the City Engineer, RYAN, AND CHICAGO TITLE TRUST, and all other aspects of said sign shall conform to the provisions of the Naperville Municipal Code in effect at the time of application for a permit therefor, including but not limited to sign code provisions, and shall be subject to an approved permit. An easement for the construction, repair, maintenance, and use of the Shared Sign shall be included in the Reciprocal Cross-Access and Signage Easement Agreement.

## **10. Building Permits.**

- 10.1 No building permits shall be issued for the SUBJECT PROPERTY, or any portion thereof, until the Preliminary/Final Subdivision Plat has been recorded and until the City has determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.

## **11. General Conditions.**

- 11.1 **Binding Effect.** The City, CHICAGO TITLE TRUST, AND RYAN each acknowledge and agree that the terms and conditions set forth and referenced herein shall be binding upon and inure to the benefit of the City CHICAGO TITLE TRUST, and RYAN, and to all successors, assigns, heirs, and transferees thereafter.
- 11.2 **Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.
- 11.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the Parties hereto.
- 11.4 **Assignment.** This Agreement may not be assigned by any Party without the written consent of the Parties, except that RYAN may assign this Agreement without the consent of the CHICAGO TITLE TRUST or the City to a special purpose entity which RYAN is a member (a “**RYAN ASSIGNEE**”).

Prior to any assignment by RYAN to a RYAN ASSIGNEE, RYAN shall provide not less than ten (10) days written notice to the City Attorney of RYAN's intent to assign, which notice shall specify the identity and contact information of the RYAN ASSIGNEE and shall describe the relationship between RYAN and the RYAN ASSIGNEE to the reasonable satisfaction of the City Attorney. Any RYAN ASSIGNEE shall be an entity authorized to transact business in the State of Illinois. No further assignment relative to Lot 1 shall occur without the prior written consent of the City.

- 11.5 **Choice of Law and Venue.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- 11.6 **Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 11.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 11.8 **Term.** This Agreement shall be effective upon the Effective Date set forth in Section 11.13 hereof and shall terminate, without further action by any Party, upon the later of ten (10) years from the Effective Date or issuance of all final certificates of occupancy for Lot 1 and Lot 2 of the SUBJECT PROPERTY.
- 11.9 **Survival.** The terms and conditions set forth in the following paragraphs of this Agreement shall survive the expiration or termination of this Agreement: Sections 1 through 10, and each Subsection thereof, and Subsections 11.1, 11.2, 11.5, 11.6, and 11.9.
- 11.10 **Authority to Execute/CHICAGO TITLE LAND TRUST.** The undersigned warrant that they are the Trust representative of the beneficial owners of Lot 2 of the SUBJECT PROPERTY, and have been directed and authorized to execute this Agreement on behalf of the Trust beneficiaries and to bind the Trust beneficiaries hereto.
- 11.11 **Authority to Execute/RYAN.** The undersigned warrant that they are the duly authorized representatives RYAN as the contract purchaser and developer of Lot 1 of the SUBJECT PROPERTY, and that the undersigned have full power and authority to sign this Agreement and bind the RYAN hereto and voluntarily agree to the provisions set forth herein.

- 11.12 **Authority to Execute/City.** The undersigned City Manager warrants that he has been directed to, and has the authority to, execute this Agreement. The undersigned City Clerk warrants that she has been directed to, and has the authority to, attest the signature of the City Manager on this Agreement.
- 11.13 **Effective Date.** The effective date of this Agreement (“**Effective Date**”) shall be the date upon which it is fully executed by the Parties hereto and recorded with the DuPage County Recorder.

/SIGNATURES ON FOLLOWING PAGES/

**CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE TO  
NORTH STAR TRUST COMPANY, AS TRUSTEE UNDER A CERTAIN TRUST  
AGREEMENT DATED MAY 26, 2011 AND KNOWN AS TRUST NUMBER 11-  
12331 ["CHICAGO TITLE TRUST"]**

By: Maureen Paige 5/8/2023

Printed Name: MAUREEN PAIGE  
ASST. VICE PRESIDENT

Attest: Attestation not required  
Pursuant to corporate by-laws  
Printed Name: \_\_\_\_\_

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.



Its: \_\_\_\_\_

State of Illinois )  
County of DUPAGE )

I, the undersigned, a Notary Public in and for said County and States aforesaid, **DO HEREBY CERTIFY** that MAUREEN PAIGE, and N/A 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 acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 8th day of May, 2023.

Lilli Kuzma  
Notary Public



**RYAN COMPANIES US, INC.**  
**A MINNESOTA CORPORATION ["RYAN"]**

By: 

Printed Name: DAVID ERICKSON

Title: Vice President of Real Estate Development

State of ILLINOIS )

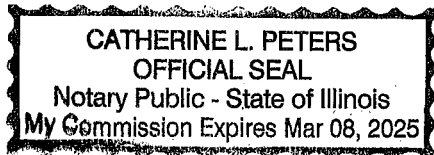
County of KANE )

I, the undersigned, a Notary Public in and for said County and States aforesaid, **DO HEREBY CERTIFY** that David Erickson, the Vice President of Ryan Companies, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument on behalf of the company, as the free and voluntary act of said entity, for the uses and purposes therein set forth.

Given under my hand and official seal this 8<sup>TH</sup> day of May, 2023.



Notary Public



**CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

Date: \_\_\_\_\_

**EXHIBIT "A"**

Legal Description of Subject Property

LOT 2 IN BARBAROTTA'S SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 20, 2002 AS [DOCUMENT NO. R2002-355159](#) IN DUPAGE COUNTY, ILLINOIS.

**Address: VACANT LAND AT AUDREY AVENUE AND ROUTE 59  
NAPERVILLE, IL 60540**

**P.I.N.: 07-27-103-008**

Upon Subdivision, Legal Description of Lot 1:

Lot 1 as depicted on the Preliminary/Final Plat of Subdivision of Audrey Senior Living Subdivision in the northwest quarter of Section 27, township 38 north, range 9 east of the third principal meridian in DuPage County, Illinois

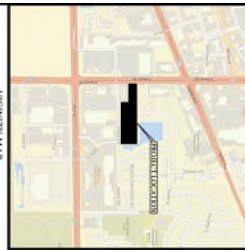
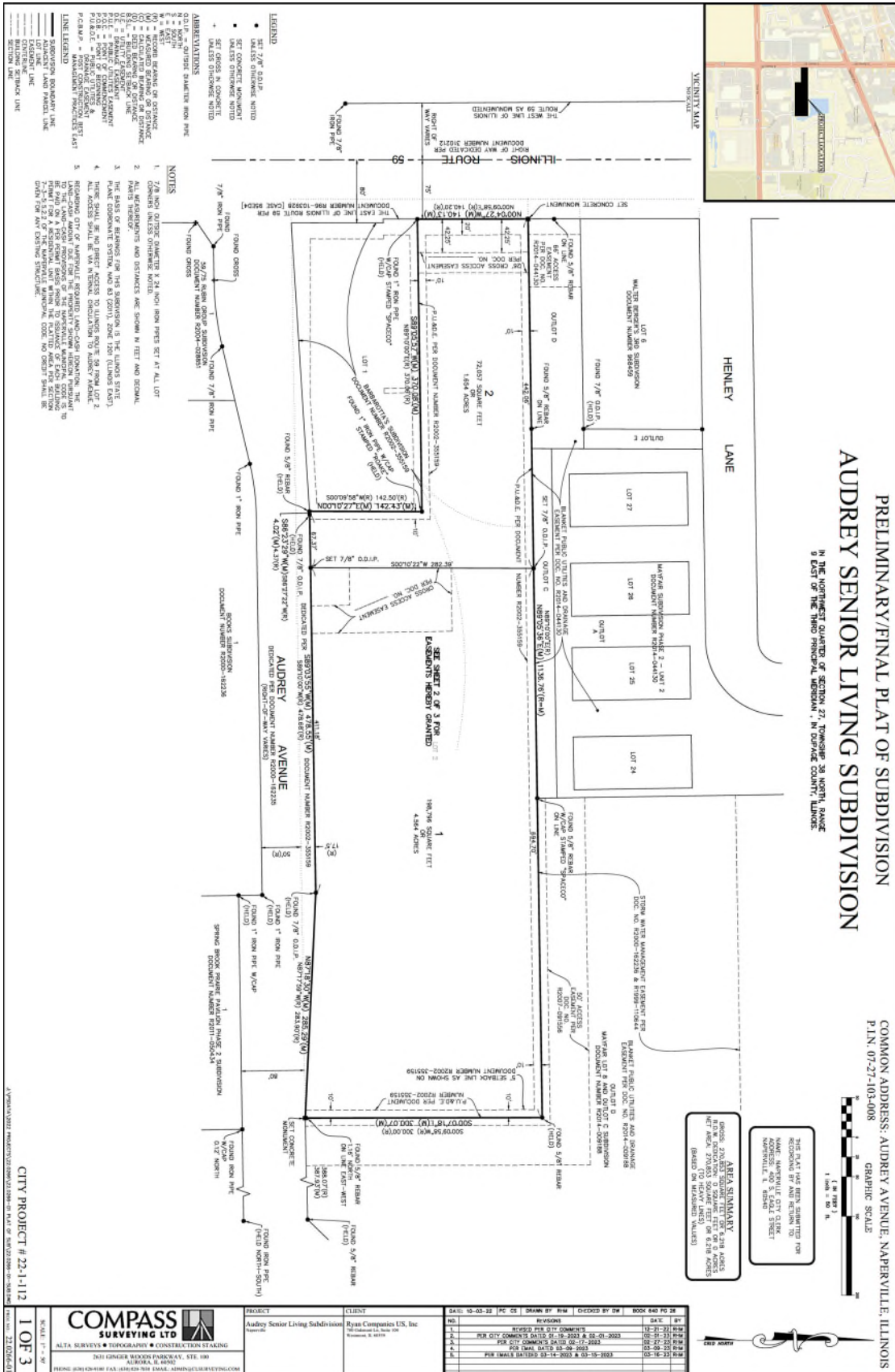
Upon Subdivision, Legal Description of Lot 2:

Lot 2 as depicted on the Preliminary/Final Plat of Subdivision of Audrey Senior Living Subdivision in the northwest quarter of Section 27, township 38 north, range 9 east of the third principal meridian in DuPage County, Illinois

**EXHIBIT "B"**

Depiction of Subject Property  
(Preliminary/Final Plat of Subdivision for Audrey Senior Living Subdivision)





PRELIMINARY/FINAL PLAT OF SUBDIVISION  
**AUDREY SENIOR LIVING SUBDIVISION**  
 IN THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 28 NORTH, RANGE  
 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS

COMMON ADDRESS: AUDREY AVENUE, NAPERVILLE, ILLINOIS  
 P.L.N. 07-27-103-008



THIS PLAT HAS BEEN SUBMITTED FOR  
 RECORD TO THE CLERK OF THE  
 COUNTY OF DU PAGE, ILLINOIS,  
 NAPERVILLE, ILLINOIS

AREA SUMMARY  
 GROSS 270,000 SQUARE FEET FOR 6.24 ACRES  
 NET AREA 270,000 SQUARE FEET OR 6.24 ACRES  
 (BASED ON MEASURED VALUES)

NO.	DATE	BY	REVISIONS
1	07-27-10	CS	PRELIMINARY PLAT
2	07-27-10	CS	FINAL PLAT

**COMPASS SURVEYING LTD.**  
 ALTA SURVEY & TOPOGRAPIK • CONSTRUCTION STAKING  
 301 GARDNER WOODS PARKWAY, STE. 100  
 FOND DU LAZ, ILLINOIS 60136  
 PHONE: (815) 491-1400 FAX: (815) 491-1401 EMAIL: ALTA@COMPASSSURVEYING.COM

PROJECT: Audrey Senior Living Subdivision  
 CLIENT: Audrey Senior Living Subdivision  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 DATE: 07-27-10

**EXHIBIT "C"**

Age Restriction Covenant

This Instrument was Prepared by  
and following recordation return to:

Rosanova & Whitaker, Ltd.  
Attn: Russell Whitaker, Esq.  
127 Aurora Avenue  
Naperville, IL 60540

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**AUDREY SENIOR LIVING  
AGE RESTRICTION COVENANT**

**RECITALS**

- A. On \_\_\_\_\_, the Naperville City Council ("**City**") approved Ordinance No. 23-\_\_\_\_ ("Ordinance") approving a Conditional Use in OCI (Office, Commercial and Institutional District) Zoning District to allow for an age-restricted, convalescent home (subject to the requirements of Section 7-3-5:4.4.5 of the Naperville Municipal Code entitled "Age Restricted Developments" and each subpart thereof), for the Audrey Senior Living development legally described on **Exhibit A** and depicted on **Exhibit B** attached hereto and made part hereof (the "**Subject Property**").
- B. On \_\_\_\_\_, the Naperville City Council ("**City**") approved Ordinance No. 23-\_\_\_\_ approving a Preliminary/Final Plat of Subdivision subdividing the Subject Property into two lots (Lot 1 and Lot 2), and a contract entitled "Owner's Acknowledgement and Acceptance Agreement" ("**OAA**").
- C. The owner of Lot 1 of the Subject Property is \_\_\_\_\_ (SPE TO BE FORMED), and its successors, transferees, and assigns ("**Owner**").
- D. Lot 1 of the Subject Property shall be developed by the Owner and shall at all times operated by an affiliate of the Owner of the Subject Property ("**Lessor**"), and by Owner's successors, assigns, and transferees, and assigns, and any subsequent Lessor, as an age-restricted, residential convalescent home (the "**Community**") as set forth in the Ordinance, the OAA, and this Audrey Senior Living Restriction Covenant (hereinafter "**Covenant**"). Each dwelling unit in the Audrey Senior Living development shall be leased by Lessor by a written lease agreement ("**Lease Agreement**") and such dwelling units shall be referenced herein as "**Dwelling Unit**" or "**Dwelling Units**". Lessees of any Dwelling Unit, and any other persons who

occupy a Dwelling Unit shall hereinafter be cumulatively referenced herein as **“Resident” or “Residents”**.

This Covenant is integral to the zoning relief granted for the Subject Property described above.

## **SECTION 1. HOUSING FOR OLDER PERSONS EXEMPTION.**

- 1.1 The Community shall be developed by \_\_\_\_\_ (SPE TO BE FORMED) and its successors, transferees, and assigns (**“Owner”**) as an age-restricted, convalescent home in accordance with the Fair Housing Amendments Act of 1988, as amended from time-to-time (**“FHAA”**), including, but not limited to, the provisions of the “Housing for Older Persons Act of 1995” (**“HOPA”**). Each Dwelling Unit shall be leased by Lessor on behalf of Owner and such lease shall include the requirements set forth herein. However, in the event that a court of competent jurisdiction determines that any portion of this Covenant violates state or federal law, then Owner shall comply with the applicable state or federal law.
- 1.2 The Community shall at all times be in compliance with FHAA and HOPA, and specifically that the Dwelling Units within the Community shall be intended for and solely occupied by individuals sixty two (62) years of age or older (**“Age-Qualified Occupant”**).
- 1.3 The Owner shall adopt, implement, monitor and enforce rules, regulations and procedures to ensure that at all times the Community qualifies for the “Housing for Older Persons” exemption under the FHAA, as may be amended from time to time, including, without limitation, rules, regulations and procedures to verify such compliance, as applicable. The Owner shall maintain appropriate records evidencing such compliance on an ongoing basis. Within seven (7) calendar days of a request by the City’s Zoning Administrator and/or a representative of the School District, the Owner shall provide them with copies of said records and shall verify the number of Dwelling Units within the Community.
- 1.4 The Owner shall ensure that each person leasing a Dwelling Unit in the Community receives a copy of this Covenant.

## **SECTION 2. PROHIBITION ON SCHOOL ENROLLMENT; COSTS, FINES, AND PENALTIES.**

- 2.1 No Resident of any Dwelling Unit shall enroll, attempt to enroll, or assist in any way in enrolling any person in any school in Indian Prairie School District No. 204 (**“School District”**) at any time. Every Lessee and occupant of any Dwelling Unit in the Community shall comply with this requirement. Notwithstanding the foregoing, the provisions of this Covenant

shall not prohibit any Resident from enrolling in non-credit, enrichment, adult education classes offered by the School District.

2.2 If any Resident of any Dwelling Unit in the Community enrolls, attempts to enroll, or assists in any way in enrolling any person under the age of twenty-two (22) in any school within the School District (“Student Generator”), then said Student Generator shall immediately cause such person to be withdrawn from enrollment in the School District (hereinafter “Withdrawn” or “Withdrawal”) and shall be liable (i) to the School District for the cost of educating any child or children so enrolled by the Student Generator from the Community prior to such Withdrawal in an amount determined in accordance with Section 10-20.12a of the Illinois School Code (105 ILCS 5/10-20.12a) as amended from time to time; (ii) to pay the School District a fine in the amount of three times the cost of educating any child or children enrolled as provided in (i) above or \$50,000.00, whichever is greater; and (iii) for all reasonable costs of any enforcement action taken by the School District, or City, including but not limited to pre-litigation expenses, litigation expenses, title reports and attorneys’ fees and costs (whether in-house or outside counsel) incurred as a result of such enforcement. Said payment shall be made within thirty (30) days of an invoice therefor from the School District, or such longer period of time as the School District may agree to in writing. The School District shall give Owner notice of any costs and fines not paid in full by the Student Generator within thirty (30) days of an invoice therefor from the School District, or such long period of time as the School District may agree to in writing. If the Student Generator has failed to make timely payment as required herein, then upon ten (10) days’ notice to Owner and an opportunity to pay the costs and fees on behalf of the Student Generator the Owner hereby consents to the School District filing a lien against the Property. Said lien shall provide for interest to accrue at the rate of seven percent (7%) percent per annum. At any time Owner may elect to pay the outstanding fines and costs on behalf of the Student Generator at which time the City and School District will cause the said lien to be released within ten (10) day of payment. Additionally, nothing herein shall prohibit the Owner from pursuing all remedies at law or equity to recoup any such fines and costs Owner has paid on behalf of and as a result of any Student Generator.

2.3 If the Owner is notified, or otherwise becomes aware (is on “**Notice**”) that there is a violation of this Covenant because a person under the age of 22, who is not exempt from the application of this Covenant under state or federal law, has been enrolled in the School District, which violation is not cured within thirty (30) days of the Owner’s being on Notice of Violation (“**Cure Period**”), the Owner shall pay the School District a penalty (“**Penalty**”) of \$500 for each day the violation continues after the Cure Period. Said Penalty shall be paid within thirty (30) days of an invoice therefor from the School District, or such longer period of time as the School District may agree to in writing. If the Penalty payment is not paid within said timeframe, the Owner hereby consents to the

School District filing a lien against the Subject Property for the total Penalty amount. Said lien shall provide for interest to accrue at the rate of seven percent (7%) percent per annum. Further, said lien may, at the School District's discretion, be included in the lien described in Section 2.2 above or may be recorded as a separate lien against the Subject Property.

**SECTION 3. COVENANTS RUNNING WITH THE LAND.**

3.1 The impositions, obligations, and restrictions set forth and referenced in this Covenant shall constitute covenants running with the Subject Property and inuring to the benefit of the Community, the City, and Community Unit School District No. 204, and their respective successors, transferees, and assigns.

**SECTION 4. REQUIREMENTS FOR ANY MODIFICATION OF THIS COVENANT.**

4.1 The provisions of this Covenant may only be modified by the concurrence of all of the following: (i) the Owner of the Subject Property; (ii) a two-thirds (2/3) majority vote of the corporate authorities then holding office with the City Council of the City, and (iii) a two-thirds (2/3) majority vote of the School Board of Community Unit School District No. 204, or their respective successors or assigns. The approval of any modification that results in the generation of students from the Audrey Senior Living Subdivision must be conditioned upon the payment of a full school donation fee for Audrey Senior Living in accordance with the applicable Naperville Municipal Code provisions then in effect, unless the School Board approves a Resolution that accepts less than a full fee.

**SECTION 5. PAYMENT OF SCHOOL DONATIONS.**

5.1 By virtue of establishing the Community as age restricted and accepting the benefits of such designation, the Owner, and all owners, transferees, and assignees of the Subject Property waive any right to challenge a requirement to pay land-cash school donation fees in accord with the provisions of the Naperville Municipal Code then in effect (currently set forth in Section 7-3-5) if payment is ever required as a result of the, modification, revocation, or removal of this Age Restriction Covenant.

**SECTION 6. GENERAL PROVISIONS.**

6.1 Governing law and venue. This Covenant will be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of law provisions. Venue for all disputes involving this Covenant shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

6.2 Severability. If any provision of this Covenant is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed stricken, and such adjudication shall not affect the validity of the

remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid.

6.3 Recitals Incorporated. Recitals A through D on page 1 hereof are incorporated. herein in their entirety by reference.

**(SIGNATURE PAGE TO FOLLOW)**



**EXHIBIT A TO AGE RESTRICTION COVENANT  
LEGAL DESCRIPTION OF THE SUBJECT PROPERTY**

PIN:

Address:



**EXHIBIT B TO AGE RESTRICTION COVENANT**

**DEPICTION OF SUBJECT PROPERTY**

**EXHIBIT "D"**

Park Donation

Name of Subdivision: Audrey Senior Residences (Assisted Living Development)

Park Donation = Land 0.0663 Cash \$21,454.68 = Total Land x \$323,600.00

Type of Uni	Pre-School 0 - 4 Yrs	Elementary Grades K-5	Junior High Grades 6-8	High School Grades 9-12	Adults 18-up	Total per Unit						
<b>Detached Single-family</b>												
2-bedroom	0.127	0.000	0.327	0.000	0.102	0.000	0.118	0.000	1.779	0.000	2.453	0.000
3-bedroom	0.244	0.000	0.440	0.000	0.179	0.000	0.177	0.000	1.892	0.000	2.930	0.000
4-bedroom	0.348	0.000	0.522	0.000	0.235	0.000	0.265	0.000	2.116	0.000	3.486	0.000
5-bedroom	0.333	0.000	0.533	0.000	0.262	0.000	0.279	0.000	2.344	0.000	3.750	0.000
<b>Attached Single-Family</b>												
1-Bedroom										0.000		0.000
2-Bedroom	0.072	0.000	0.091	0.000	0.044	0.000	0.080	0.000	1.610	0.000	1.897	0.000
3-Bedroom	0.157	0.000	0.178	0.000	0.060	0.000	0.113	0.000	1.746	0.000	2.253	0.000
4-Bedroom	0.217	0.000	0.358	0.000	0.154	0.000	0.198	0.000	2.127	0.000	3.053	0.000
<b>Apartments</b>												
25.5 Efficiency									1.210	30.855	1.210	30.855
1-Bedroom	0.015	0.000	0.033	0.000	0.013	0.000	0.013	0.000	1.691	0.000	1.764	0.000
2-Bedroom	0.037	0.000	0.063	0.000	0.028	0.000	0.030	0.000	1.748	0.000	1.906	0.000
3-Bedroom	0.037	0.000	0.152	0.000	0.091	0.000	0.083	0.000	2.330	0.000	2.692	0.000
<b>People Produced</b>		0.000		0.000		0.000		0.000		30.855		30.855
<b>School Aged Children to be Produced</b>												
												0.000

	1-Bed	2-Bed	Total Beds
Memory Care		26	2
Assisted Living		54	9
			102

102/4 = 25.5

Name of Subdivision: Audrey Senior Residences (Age Restricted Development)

Park Donation = Land 1.2229 Cash **\$395,730.44** = Land Donation x \$323,600.00

=Round((Total People Produced x 0.0086),4)

Type of Uni	Pre-School 0 - 4 Yrs	Elementary Grades K-5	Junior High Grades 6-8	High School Grades 9-12	Adults 18-up	Total per Unit						
<b>Detached Single-family</b>												
2-bedroom	0.127	0.000	0.327	0.000	0.102	0.000	0.118	0.000	1.779	0.000	2.453	0.000
3-bedroom	0.244	0.000	0.440	0.000	0.179	0.000	0.177	0.000	1.892	0.000	2.930	0.000
4-bedroom	0.348	0.000	0.522	0.000	0.235	0.000	0.265	0.000	2.116	0.000	3.486	0.000
5-bedroom	0.333	0.000	0.533	0.000	0.262	0.000	0.279	0.000	2.344	0.000	3.750	0.000
<b>Attached Single-Family</b>												
1-Bedroom										0.000		0.000
2-Bedroom	0.072	0.000	0.091	0.000	0.044	0.000	0.080	0.000	1.610	0.000	1.897	0.000
3-Bedroom	0.157	0.000	0.178	0.000	0.060	0.000	0.113	0.000	1.746	0.000	2.253	0.000
4-Bedroom	0.217	0.000	0.358	0.000	0.154	0.000	0.198	0.000	2.127	0.000	3.053	0.000
<b>Apartments</b>												
Efficiency									1.800	0.000	1.800	0.000
44 1-Bedroom	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	1.800	79.200	1.800	79.200
35 2-Bedroom	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	1.800	63.000	1.800	63.000
3-Bedroom	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	1.800	0.000	1.800	0.000
<b>People Produced</b>		0.000		0.000		0.000		0.000		142.200		142.200