

**PURCHASE AND SALE AGREEMENT
FOR CITY PROPERTY LOCATED SOUTH OF THE
SOUTHEAST CORNER OF ROUTE 59 AND 103RD STREET**

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) by and between the City of Naperville, an Illinois Municipal Corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, with its principal offices at 400 South Eagle Street, Naperville, Illinois 60540 (hereinafter “**City**”) and Tower Court Naperville, LLC, a Wisconsin limited liability company registered to transact business in the State of Illinois with its principal offices located at 200 North Main Street, Oregon, WI 53575 (hereinafter “**TCN**” or “**Developer**”). The City and TCN may be referenced herein individually as “**Party**” and together as “**Parties**”.

RECITALS

A. The City owns certain real property located at the southeast corner of Illinois Route 59 and 103rd Street on Tower Court in the City of Naperville in Will County which property is legally described on **Exhibit A** and depicted on **Exhibit B** attached hereto and which has a common address of 4231 Tower Court, Naperville, IL 60564 (the “**Property**”).

B. The City and TCN have been working collaboratively on a development to be located on a portion of the City’s Property which will provide a mix of affordable rental residential units for seniors who are sixty-two (62) years of age and older, and for individuals with intellectual and/or developmental disabilities (“**IDD residents**”) who are eighteen (18) years of age and older, (the “**Affordable Housing Development**”), subject to agreed-upon Major Business Terms for the Affordable Housing Development further referenced in **Recital C**.

C. Subject to the terms, preconditions, and conditions set forth and referenced herein, TCN desires to purchase approximately 4.68 acres of the Property as legally described on **Exhibit A** and depicted on **Exhibit B** (the “**Project Property**”) for the purpose of constructing and operating the Affordable Housing Development generally described in Recital B above, as set forth in greater detail in the major business terms (“**Major Business Terms**”) attached hereto as **Exhibit C** and as generally depicted on TCN’s proposed site plan (“**Site Plan**”) attached hereto as **Exhibit D**.

D. The City has determined that continued ownership of the Project Property is no longer necessary, appropriate, required for the use of, or profitable to retain, and therefore has determined that it is in the best interests of the City to sell the Project Property for the purposes described herein pursuant to the terms and conditions contained herein, and pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

E. The City either has or may enter into a Purchase Agreement with LTF Real Estate Company, Inc. for the sale of approximately 12.55 acres of the Property located north of the Project Property (referenced herein as “**LTF Property**”) for the purpose of constructing a development containing certain improvements, such as a building, outdoor pool deck, outdoor child care, on-site stormwater management, and 550 parking spaces (referenced herein as the “**LTF Development**”).

F. After conveyance of the Project Property and the LTF Property, the remaining parcel will remain part of the Property (referenced herein as the “**City Outlot**”).

G. The City owns real property (“**City Property**”) to the north and east of the Project on which a fire station and water tower are located.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and TCN agree that:

1. RECITALS INCORPORATED BY REFERENCE.

1.1 The Recitals set forth above are incorporated in this Section 1.1 in their entirety by reference.

2. PURCHASE PRICE.

2.1 TCN will pay eight dollars and fifty cents (\$8.50) per square foot for the Project Property (the “**Purchase Price**”).

2.1.1 At Closing, as defined herein, TCN will pay the City three hundred and twenty thousand dollars (\$320,000) of the Purchase Price (the “**Initial Purchase Price Payment**”), and TCN will deliver a promissory note (“**Promissory Note**”) to the City for the balance of the Purchase Price plus interest to be applied at the Applied Federal Rate of interest per annum (established as of the date of Closing) compounded annually during the time that the Promissory Note remains outstanding. TCN will also grant a mortgage (“**Mortgage**”) to the City for the balance of the purchase price plus interest as set forth above. The Promissory Note and Mortgage may herein be referenced together as the “**City Loan**”.

TCN shall pay off the City Loan in full the earlier of: (i) within thirty (30) days of any resyndication associated with the Project Property as allowed under as provided for in 26 U.S.C §42; (ii) upon the sale of all or any portion of the Project Property; or (iii) within thirty (30) years of the Effective Date of this Agreement. Notwithstanding the foregoing, TCN shall retain the right to pay the City Loan in full before prior to occurrence of any of the foregoing.

Gorman & Company, LLC agrees that it will guarantee payment of the Promissory Note and the Mortgage (herein the “**Gorman Guarantee**”). Said Gorman Guarantee shall remain in effect until the Construction Loan, as defined in Section 2.1.3 below, has been paid in full and released. At such time, the Gorman Guarantee shall automatically expire without further action taken by either Party hereto. Gorman & Company, LLC shall send the City Manager written notification of expiration of the Gorman Guarantee.

2.1.2 Failure of TCN to pay the City Loan in full as set forth above shall constitute a default of said City Loan and shall result in the City having the right to foreclose upon the mortgage, promissory note, and/or such other instruments approved by the City

Attorney, and take possession of the Project Property and/or take such other action as permitted at law or in equity or as otherwise provided herein.

2.1.3 In addition to foregoing, a provision shall also be included in the OAA (referenced in Section 15 hereof), prohibiting TCN from making the City Loan (either the Promissory Note or the Mortgage) subordinate to any loans or repayments of any kind other than the following: (i) the first mortgage construction loan (“**Construction Loan**”); and (ii) the first mortgage permanent loan (“**Permanent Loan**”). Unless agreed to in writing by the City Manager, allowing the City Loan to become subordinate to any other loan or repayment of any kind, other than as set forth above, shall be considered a default of said City Loan and shall result in the City having the right to foreclose upon the Mortgage, Promissory Note, and/or such other instruments approved by the City Attorney, and take possession of the Project Property and/or take such other action as permitted at law or in equity or as otherwise provided herein.

2.1.4 The provisions of this Section 2, and each subsection hereof, shall survive the Closing and conveyance of the Project Property to TCN.

3. PRE-CONDITIONS TO SALE OF THE PROJECT PROPERTY.

3.1 Unless waived in writing by TCN, proceeding with acquisition of the Project Property as set forth herein is contingent upon award and receipt by TCN of DuPage County HOME funds for the Affordable Housing Development in an amount not less than one million nine hundred (\$1,900,000) dollars. If said HOME funds, or alternative equivalent financing, is not awarded and received by TCN in 2023, the City shall have the option to terminate this Agreement upon thirty (30) days’ notice and TCN and the City shall have no further obligations hereunder.

3.2 TCN shall have no obligation to purchase the Project Property, and no transfer of title of said Project Property to TCN may occur, unless and until the Illinois Housing Development Authority (“**IHDA**”) has provided TCN and/or the City with written notification that IHDA has completed a federally required environmental review and TCN’s request for release of federal funds has been approved and:

- a) Purchase of the Project Property may proceed;
- b) Purchase of the Project Property may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the Project Property; or
- c) IHDA has determined that purchase of the Project Property is exempt from federal environmental review and a request for release of funds is not required.

3.3 TCN shall have the right to terminate this Agreement if it is unable to obtain adequate zoning and other entitlements it deems necessary and reasonable to build the Affordable Housing Development as generally depicted on the Site Plan attached hereto as **Exhibit D** on or before **December 31, 2023**.

If the foregoing condition is not met in the year 2023, or any other timeframe approved in writing by the City Manager, the City shall have the option to terminate this Agreement upon thirty (30) days' notice and TCN and the City shall have no further obligations hereunder.

3.4 TCN shall have no obligation to Close on the Project Property until the Project Property has been platted as an independent and separate lot which constitutes a single tax parcel.

3.5 TCN shall have no obligation to Close on the Project Property until it has obtained necessary funding to proceed.

3.6 Notwithstanding any other provision in this Agreement, if TCN has not advised the City in writing of its willingness to proceed to Closing on or before **September 30, 2024**, or any other timeframe approved in writing by the City Manager, the City shall have the option, at its sole discretion, and at no cost or penalty, to terminate this Agreement upon thirty (30) days' notice and TCN and the City shall have no further obligations hereunder.

4. INSPECTION PERIOD.

4.1 TCN will have the right to enter onto the Project Property from the Effective Date of this Agreement through December 31, 2023 (the "**Inspection Period**") to conduct any inspection and testing of the Project Property, including without limitation, environmental and geotechnical testing subject to execution of and compliance with an Access and Indemnity Agreement substantially in the form attached hereto as **Exhibit E**. If environmental conditions are discovered on the Project Property for which remediation is needed, the parties shall work in good faith to agree upon the scope, timeframe, and costs therefor (for which the City will be responsible) and if agreement cannot be reached, either Party may terminate this Agreement upon not less than ten (10) days' notice.

4.2 TCN shall give the City written notice not later than ten (10) days after expiration of the Inspection Period, but sooner if practicable, if it determines during the Inspection Period that it is not satisfied with the Project Property for any reason or no reason whatsoever. In such case this Agreement will terminate and TCN and the City shall have no further obligations hereunder.

5. AGREED UPON MODIFICATION OF DATES.

5.1 The legal representatives for the City and TCN may agree in writing (including by email) to revise any timeframe or due date provided for herein.

6. ENVIRONMENTAL EXPECTATIONS.

6.1 Prior to Closing, the City will perform a Phase II environmental site assessment of the Property (or Project Property) at its sole cost and shall provide TCN with the results thereof. Prior to Closing, the City shall have completed environmental remediation of the Project in accordance with applicable environmental laws to the extent determined necessary and appropriate by the City.

7. IMPROVEMENTS.

7.1 Route 59 Improvements. Contingent upon obtaining the necessary approvals and permits from the Illinois Department of Transportation (IDOT), the City will 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. So long as approval from IDOT is obtained, 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. It is anticipated by the City that construction of the Illinois Route 59 access will be completed by November 30, 2024.

If the Route 59 access cannot go forward for any reason, an alternative second means of ingress and egress (“**Alternative Access**”) shall be provided by the City to the Project Property at the City’s cost.

The City agrees that absent an event of force majeure (“**Force Majeure**”), either the Illinois Route 59 access or the Alternative Access referenced above shall be completed on or before July 31, 2025. For the purposes of this Agreement, Force Majeure is defined as any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, pandemic, or any other cause beyond a Party’s control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.

7.1.1 Route 59 Access /Alternative Access/Access Roadway. The City will construct an access drive between the Illinois Route 59 access point, or the Alternative Access point, as applicable, and the Project Property (the “**Access Roadway**”). The Access Roadway may also serve the City Outlot. Said Access Roadway shall not be a public roadway. The City and TCN will enter into a non-exclusive easement agreement by which employees and invitees of the Project Property will have a right to use the Access Roadway subject to payment of a share of ongoing maintenance, repair, and reconstruction costs therefor. The City may grant other properties similar easements to use the Access Roadway which entities will also be required to share in the costs of repair, maintenance, and reconstruction thereof. Finally, said Access Roadway may be conveyed by the City to another entity; however, such conveyance shall not negate any easement previously granted. This provision shall survive the Closing and conveyance of the Project Property to TCN.

7.2 Stormwater Management. 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. TCN shall provide stormwater storage for both the Project Property and 1.99 acre feet which represents storage for upstream properties.

7.2.1 Northern Stormwater Management Facility

7.2.1.1 A stormwater basin (“**Stormwater Basin**”) will be constructed on portions of each of the Project Property, the LTF Property, and the City Outlot, which Stormwater Basin will serve the Project Property, the LTF Property, the City Outlot, and the City Property (herein referenced as the “**Stormwater Beneficiaries**”). Unless otherwise agreed, construction of the Stormwater Basin will be performed by TCN or LTF. The cost to construct the Stormwater Basin will

be shared by the Stormwater Beneficiaries pro-rata based on the engineered capacity need of each of the properties as determined by the City Engineer.

7.2.1.2 Each of the Stormwater Beneficiaries shall be responsible for day to day operations and routine maintenance of the portion of the Stormwater Basin located on each respective owner's property, including but not limited to maintaining vegetation and mowing.

7.2.1.3 The installation and cost of expenditures for major improvements and/or repairs to the Stormwater Basin shall be shared by the Stormwater Beneficiaries on a pro rata basis based on the engineered capacity need of each of the properties, with the City taking the lead role in organizing when and how such improvements and/or repairs are to be undertaken and paid for. A stormwater management easement shall be granted to the City on the subdivision plat(s) creating the lots for the Project Property, the LTF Property, and the City Outlot. Prior to Closing the Stormwater Beneficiaries will negotiate a separate stormwater easement and maintenance agreement (the "**Stormwater Agreement**") setting forth provisions related to the Stormwater Basin and the obligations of the Stormwater Beneficiaries, which agreement shall grant the City the right, but not the obligation to access all parts of the Stormwater Basin to perform any necessary work and which shall provide for pro rata payment therefor with the City's right to lien the properties of any of the Stormwater Beneficiaries who fail to pay their share of the actual and reasonable costs of said improvements or repairs, plus reasonable attorney's fees and lien recording costs.

7.2.2 Eastern Stormwater Management Facility

7.2.1.1 A stormwater detention area currently exists on the eastern portion of the Project Property, which detention area (the "**Eastern Stormwater Management Facility**") serves real property located to the east of the Project Property owned by Wheatland Township.

7.2.2.2 Unless modified by an agreement entered into between TCN and Wheatland Township, day to day operations and minor maintenance of the Eastern Stormwater Management Facility to the extent that it is located on the Project Property, including but not limited to maintaining vegetation and mowing and long-term capital improvements, shall be the responsibility of the owner of the Project Property.

7.2.2.3 TCN may terminate this Agreement if a mutually acceptable easement agreement is not reached with Wheatland Township prior to Closing with respect to the Eastern Stormwater Management Facility and the grant of an access drive easement to TCN.

7.3 Electric Utility Extension. TCN will be responsible for the cost to extend the City electric utility to the Project Property.

7.4 Wheatland Township Reimbursement. TCN will be obligated to reimburse Wheatland Township for a portion of the actual costs expended by the Township for Watermain and Sanitary Sewer as determined by the City Engineer and approved by TCN which approval shall not be unreasonably withheld, conditioned, or denied.

7.5 City Reimbursement for Wastewater Pump Station and Force Main. TCN will be obligated to reimburse the City five hundred and sixty-six dollars and thirteen cents \$566.13 per acre for its share of the 111th Street Wastewater Pump Station and Force Main.

7.6 City Reimbursement for Water and Sanitary Sewer Utilities. TCN shall reimburse the City for the City's actual costs to extend the water utility and the sanitary sewer utility to the Project Property, including but not limited to \$40 per foot of the Project Property's frontage along Tower Court for water main extension completed when Tower Court was installed and \$6,543.84 for the 24" valve installed when Tower Court was constructed.

7.7 Tower Court Sidewalk. TCN will be responsible, at its cost, to construct the sidewalk extension along Tower Court to 103rd Street. A timeframe for construction will be agreed upon by TCN and the City Engineer, but said timeframe shall not extend more than one (1) year past issuance of an occupancy permit for the Project Property absent written approval of an extension by the City Engineer. Notwithstanding the foregoing, if development of the LTF Property is proceeding, as determined by the City Engineer, then TCN will only be responsible for constructing the sidewalk to its northern property line and the LTF Development will be responsible for construction sidewalk along Tower Court from the common property line between the TCN Property and the LTF Property north to 103rd Street.

7.8 Adjacent Property Reimbursement. If the LTF Property owner extends City utilities that will benefit the Project Property, TCN will be obligated to reimburse the owner for a share of the costs of such extension to the extent that such it will benefit the Project Property as determined by the City Engineer. If TCN extends City utilities that will benefit the LTF Property, LTF shall be obligated to reimburse TCN for a share of the costs of such extension to the extent that they will benefit the LTF Property as determined by the City Engineer.

7.9 Required Two Points of Access. Access shall be provided to Illinois Route 59 and to Tower Court. The exact location and means of such access shall be determined through submittal, review, and approval of the TCN development petition by the City. TCN shall be responsible to pay a share of any maintenance, repair, and reconstruction costs related to provision of said access to the extent that another entity is responsible therefor. The provisions related to such cost-sharing and access may be established in one or more agreements between TCN and the City, the property owner to the north, and Wheatland Township.

7.10 Survival. The provisions of this Section 7 and each subpart hereof shall survive the Closing and conveyance of the Project Property to TCN.

8. "AS-IS" CONDITION OF THE PROJECT PROPERTY.

8.1 The City is selling the Project Property "AS-IS" at the time of Closing. This provision shall survive the Closing and conveyance of the Project Property to TCN.

9. CITY REPRESENTATIONS.

9.1 The City represents to TCN, as of the Effective Date and as of the Closing date, as those terms are defined herein, that:

9.1.1 The Property, including the Project Property, is the subject of a lease entered into by the City for farming and leaf storage (the “**Drendel Lease**”). The City will terminate the Drendel Lease such that said termination shall take effect prior to the Closing date. There are no other lease or rental agreements encumbering of the Project Property, or any portion thereof, and the City agrees that it shall not encumber the Project Property, or any part of it, with any lease, lease renewal, or rental agreement that will extend past the Closing.

9.1.2 The City represents that no part of the Project Property is the subject of any ordinance or building code violation action or pending condemnation action by the City.

9.1.3 The City represents to TCN that except as set forth in the Naperville Municipal Code and regulations in effect at the time the Project Property is developed, including but not limited to the City’s Zoning Code and Building Code, and except as provided or referenced herein, the Project Property is not subject to any existing or contemplated covenants or restrictions providing for use restrictions, design controls, or architectural approvals, or assessments or association dues.

9.1.4 The City represents that it has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and consummate the transaction contemplated by this Agreement. The execution, delivery and performance by the City of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any governing document, agreement, judicial or administrative order or any law to which the City or any portion of the Project Property is bound. This Agreement and all documents required hereby to be executed by the City are and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

9.1.5 There are no judgments presently outstanding and unsatisfied against the City or the Project Property, nor is there any action, litigation, or investigation proceedings of any kind pending or threatened against the City or the Project Property which could adversely affect the Project Property, any portion thereof or title thereto, or which would have a materially adverse effect on the City’s power or authority to enter into or perform its obligations under this Agreement. The City shall give TCN prompt written notice if any such judgment, action, litigation, condemnation or proceeding is commenced or threatened prior to the Closing date.

9.1.6 To the knowledge of the City Manager and the Director of the Transportation, Engineering and Development Department of the City, there are no underground or above ground storage tanks on the Project Property, in use or abandoned, and no such tanks have been removed during the City’s ownership of the Project Property except in strict compliance with all laws, ordinances, and regulations regarding such removal.

9.1.7 Except as set forth or referenced herein, or as set forth in any agreement with Wheatland Township (Road District and/or Township) that has been provided by the City to TCN (including the 2007 Intergovernmental Agreement with the Wheatland Township Road District, the 2007 Intergovernmental Agreement with Wheatland Township, and the First Amendment to the 2007 Intergovernmental Agreement with Wheatland Township), the City has not made, and will not make or permit to be made or imposed, any commitments or representations to any applicable governmental authorities or to adjoining or surrounding property owners, which would be binding upon TCN or the Project Property. A copy of said agreement(s) shall be delivered to TCN.

9.1.8 Except to the extent set forth or referenced in any Phase 1 or Phase 2 environmental site assessment which the City has undertaken, or any amendment, revision, and/or addendum thereto, to the knowledge of the City Manager and the Director of the Transportation, Engineering and Development Department of the City: (i) no Hazardous Substances (as defined below) have been disposed of, or identified on, under or at the Project Property; (ii) the City has not received written notice from any political or quasi-political authority, subdivision, agency, department, court, commission, board, bureau or instrumentality of any of the foregoing asserting jurisdiction over any of the parties hereto or over the Project Property, that the Project Property is or may be in violation of any applicable federal, state or municipal law, ordinance or regulation regarding Hazardous Substances; (iii) any handling, transportation, storage, treatment or usage of Hazardous Substances by the City that has occurred on the Project Property to date has been in compliance with all Environmental Laws.

9.1.8.1 As used herein, the term “**Hazardous Substances**” shall mean those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them. As used herein, the term “**Environmental Laws**” (and individually, “Environmental Law”) shall mean each and every applicable federal, state, county or municipal statute, ordinance, rule, regulation, order, code, directive or requirement.

9.1.8.2 TCN and its successors and assigns are prohibited from using groundwater for potable purposes and prohibited from constructing basements or underground facilities other than structural elements required for construction on the Project Property unless specifically authorized in writing by the City.

9.1.9 Subject to TCN’s payment of all fees, reimbursement costs (due to the City, Wheatland Township, and/or LTF as applicable), and fees and costs set forth in the Naperville Municipal Code, as amended from time to time, including but not limited to costs associated with installation of necessary infrastructure, the City represents that the City utilities (electric, water, wastewater) will be adequate to serve the requirements of the Project Property.

9.1.10 The City hereby agrees that each of the foregoing representations shall be deemed restated effective as of Closing, and shall survive the Closing and conveyance of the Project Property to TCN.

10. PLAT OF SURVEY AND STAKING.

10.1 Not less than thirty (30) days prior to Closing on the Project Property, TCN shall deliver to the City an ALTA plat of survey of the Project Property prepared by an Illinois licensed land surveyor showing the legal description and acreage of the Project Property.

10.2 Not less than ten (10) days prior to Closing on the Project Property, TCN shall cause the property corners of the Project Property to be staked so that they are easily identifiable.

11. TITLE COMMITMENT.

11.1 Not more than thirty (30) days of the Effective Date of this Agreement, or such other timeframe agreed to in writing by the Parties, TCN shall, at its cost, order a Title Commitment for the Project Property (“**Project Property Title Commitment**”).

11.2 Permitted exceptions (“**Permitted Exceptions**”) to the Project Property Title Commitment shall include the following and any other exceptions agreed to by the Parties:

- (i) General real estate taxes not due and payable at time of Closing
- (ii) City of Naperville zoning laws and ordinances;
- (i) Easements for public utilities;
- (ii) Public roads and highways and easements pertaining thereto;
- (iii) All special service areas and easements of record;
- (iv) The provisions of the Intergovernmental Land Sale and Purchase Agreement between the City of Naperville and the Wheatland Township Road District” dated April 4, 2007; and
- (v) The provisions of the LTF Covenant referenced in Section 9.1.4 hereof.

11.3 TCN shall notify the City of any objections to Title Exceptions listed in the Title Commitment (“**Title Objections**”) within ninety (90) days of execution of this Agreement or such other timeframe agreed to by the Parties. The City shall use commercially reasonable efforts to cure any Title Objections within sixty (60) days after the City’s receipt of the Title Objections (“**City’s Cure Period**”) or such longer period of time as may be agreed to by TCN. If TCN makes objections to the Title Evidence and if the City fails to cure all items to which TCN objected in TCN’s Title Objections prior to the expiration of City’s Cure Period, TCN shall have the option, by written notice to the City within ten (10) business days after expiration of City’s Cure Period, to either:

- (a) Terminate this Agreement, in which event this Agreement shall terminate and neither Party shall be liable for damages hereunder to the other Party (except for those provisions which survive expiration or termination of this Agreement); or

(b) Elect to proceed with the transaction as provided herein, in which event TCN shall accept title to the Project Property subject to the Permitted Exceptions and any uncured Title Objections.

If TCN does not give the City notice of its election to terminate this Agreement within ten (10) business days after expiration of the City's Cure Period, this Agreement shall remain in full force and effect.

Notwithstanding the foregoing, if any Permitted Exception hereto results in the Project Property not being able to be utilized by TCN for the purposes described herein, TCN may terminate this Agreement upon not less than ninety (90) days' notice after receipt of the Title Commitment as set forth in Section 11.1 above, in which event neither Party shall be liable for damages hereunder to the other Party (except for those provisions which survive expiration or termination of this Agreement).

12. CLOSING DATE AND POSSESSION; TAXES.

12.1 When used herein, the term "**Closing**" (or "**Close**") shall mean the conveyance of the Project Property by the City to TCN upon payment of the Initial Purchase Price Payment subject to compliance with the terms of this Agreement. Closing shall be conducted by Wheatland Title Company or by the title company which performed the Title Commitment for the Project Property if not Wheatland Title Company.

12.2 City and TCN will Close on the conveyance of the Project Property no later than September 30, 2024. If for any reason TCN is not prepared to Close by that date, the other Party shall have the option to terminate this Agreement upon thirty (30) days' notice and TCN and the City shall have no further obligations hereunder.

12.3 Possession of the Project Property shall be granted to TCN at the time of Closing.

12.4 Except as otherwise provided below, the Parties shall equally share the costs of Closing.

12.4.1 Each Party shall be responsible for payment of its own attorney's fees and costs associated in any way with the conveyance of the Project Property, including but not limited to the Closing.

12.4.2 TCN shall pay the cost of the Title Commitment and any update thereto required at Closing. TCN shall pay for extended coverage, if applicable, and any endorsements to Title, for the cost of the owner's policy of title insurance, and for recordation of the Deed. The City shall pay for any applicable transfer taxes.

12.5 Taxes, if any, due in the year of Closing shall be prorated between the City and TCN based upon the date of Closing. The City shall pay all real property taxes, interest, and penalties on the Project Property due in the years prior to the year of Closing. The City shall pay all special assessments (including portions otherwise payable in future installments) levied or pending as of Closing, including interest and penalties thereon. The City shall be responsible for any transfer or deed taxes and any deferred (including rollback) taxes due because of the sale

contemplated hereunder. Any real estate taxes, interest, penalties, or special assessments that accrue on the Project Property after Closing shall be TCN's sole responsibility to pay.

12.6 The provisions of this Section 12 and each subsection hereof will survive the Closing and conveyance of the Project Property to TCN.

13. CLOSING DOCUMENTS.

13.1 At Closing the City shall convey the Project Property to TCN by a recordable quit claim deed in ("**Deed**") in a form approved by the City Attorney. The City shall also deliver the following closing documents at or before Closing:

- (i) An affidavit, executed by the City and stating its taxpayer identification number for federal income tax purposes and that the City is not a foreign person within the meaning of Section 1445, et. seq. of the Internal Revenue Code.
- (ii) A resolution or ordinance of the City authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.
- (iii) The City's settlement statement.
- (iv) Such disclosures and reports as are required by applicable state and local law in connection with the sale, transfer and conveyance of the Project Property, if any.
- (v) An Affidavit of Title covering the date of Closing. The City shall also furnish such other documents as are customarily required to be delivered by seller at Closing. The City and TCN will execute a completed Real Estate Transfer Declaration signed by authorized agents in the form required by the Illinois Real Estate Transfer Act.
- (vi) IRS Form 1099.
- (vii) An ALTA statement, gap indemnity and any other documents, instruments, records, correspondence or agreements which are reasonably required by the Title Company, as defined herein, or otherwise to close the escrow and consummate the purchase and sale of the Project Property in accordance with the terms hereof.

13.2 At Closing TCN shall deliver the following Closing documents:

13.2.1 Not less than five (5) calendar days before Closing:

- (i) A copy of a corporate resolution authorizing execution of this Agreement on behalf of TCN.
- (ii) Disclosure of Beneficiaries referenced in Section 16.1 below.

13.2.2 Before or at Closing:

- (i) An ALTA statement, gap indemnity and any other documents, instruments, records, correspondence or agreements which are

reasonably required by the Title Company or otherwise to close the escrow and consummate the purchase and sale of the Project Property in accordance with the terms hereof.

14. EXECUTORY PERIOD.

14.1 From the Effective Date until the Closing date or the date of termination of this Agreement (the “**Executory Period**”), the City shall:

- (a) Keep the Project Property in the same condition as of the Effective Date, ordinary wear and tear excepted except that the City may opt to allow continuation of the Drendel Lease so long as said Lease is terminated prior to Closing.
- (b) Advise TCN promptly of any litigation, arbitration or administrative hearing before any governmental agency concerning or affecting the Project Property that is instituted after the date hereof.
- (c) Keep, observe, and perform in a timely manner all of its obligations under any contractual obligations affecting the Project Property.
- (d) Not sell, assign, or convey any right, title, or interest whatsoever in or to the Project Property, or create or permit to exist any lien, encumbrance, or charge thereon without promptly discharging the same (except for possible continuation of the Drendel Lease until Closing).
- (e) Promptly advise TCN in writing of any written notices concerning the Project Property that the City receives from any appraisal districts, taxing authorities, building officials, zoning officials, or any governmental agency having jurisdiction over the Project Property.
- (f) Maintain in full force and effect any existing insurance covering the Project Property.
- (g) Not enter into any new service contracts or other agreements affecting the Project Property except for possible continuation of the Drendel Lease until Closing.

The City shall defend, indemnify, and hold TCN harmless from and against any claim, liability, damage or expense asserted against or suffered by TCN arising from a breach by the City of its obligations under this Section. The foregoing defense, indemnification, and hold harmless obligations under this Section shall survive the Closing and conveyance of the Project Property to TCN.

15. OWNER'S ACKNOWLEDGMENT AND ACCEPTANCE AGREEMENT ("OAA").

15.1 The City and TCN shall agree upon the terms of an Owner's Acknowledgement and Acceptance Agreement ("**OAA**") applicable to the Project Property setting forth specific requirements, obligations, and provisions relative to development and use of the Project Property which shall not be inconsistent with the provisions of this Agreement and the MBTs attached hereto as **Exhibit C** unless such changes are agreed upon by the Parties. The terms of the OAA shall be in addition to any ordinances applicable to the Project Property; provisions of the Naperville Municipal Code as amended from time to time; and/or other applicable laws, as amended from time to time, to the extent said ordinances, Code provisions and/or other applicable laws are applicable to the Project Property. Said OAA shall be executed by TCN and approved with the ordinance approving subdivision of the Project Property or at such other time agreed upon by the Parties so long as it is approved, fully executed, and recorded with the Will County Recorder prior to conveyance of the Project Property to TCN. Notwithstanding the foregoing, the OAA shall provide that it shall not take effect until the day after the Project Property has been conveyed to the Developer by the City.

The Parties hereto agree, and agree that the OAA shall provide, that to the extent of any conflict or inconsistency with the provisions of this Agreement, including but not limited to the MBTs and any exhibit attached hereto, the OAA, the provisions and exhibits of the OAA shall control.

16. CITY'S RIGHT TO REPURCHASE.

16.1 If the Developer has not commenced construction of the Project within thirty (30) days after Closing, the City shall have the right, but not the obligation, to repurchase the Project Property (the "**Right to Repurchase**"), and the Developer shall be obligated to sell the Project Property back to the City for three hundred and twenty thousand dollars (\$320,000) plus interest at the Applied Federal Rate of interest per annum and established as of the Effective Date of this Agreement (the "**Repurchase Price**"). Upon Repurchase, the City shall terminate the Promissory Note and the Mortgage. For the purposes of this provision, construction will be deemed to have commenced when, within thirty (30) days of Closing, TCN has given its general contractor notice to proceed which notice shall require the contractor to commence work on the Project Property within sixty (60) days therefrom.

16.2 The provisions of this Section 16 and each subsection hereof shall survive the Closing and conveyance of the Project Property to TCN.

17. CONDEMNATION.

17.1 In the event of a taking by condemnation or similar proceedings or actions of all or any part of the Project Property, TCN shall have the option to terminate this Agreement upon written notice to the City within thirty (30) calendar days after notice thereof. If TCN does not exercise its option under the immediately preceding sentence of this Section to terminate this Agreement, then the Agreement shall remain in full force and effect and the City shall assign or

pay to TCN at Closing, the City's entire interest in and to any and all condemnation awards or proceeds from any such proceedings or actions in lieu thereof.

18. STATUTORY COMPLIANCE.

18.1 The Parties hereto shall provide, and consent to the reporting of, all information regarding this sale required by any act, regulation or statute, including all amendments thereto, of the United States of America, or the State of Illinois, or any agency or subdivision thereof. TCN has provided the City with a disclosure of beneficiaries required by 50 ILCS 105/3.1.

18.2 The Parties hereto shall at all times comply with all of the requirements of all county, municipal, state, federal and other applicable governmental statutes or regulations, now in force, or which may hereafter be in force pertaining to the performance of this Agreement.

19. BINDING EFFECT.

19.1 Subject to the requirement that any assignment of this Agreement be approved by the other Party as set forth in Section 22.7 hereof, this Agreement shall be binding upon the Parties hereto, their successors, assigns, transferees, and grantees. The provisions of this Section 19.1 shall survive the Closing and conveyance of the Project Property to TCN.**20. NO BROKERS.**

20.1 Each Party warrants and represents to the other that it has not retained a broker in connection with the purchase and sale of the City Parcel. Each Party agrees to defend, indemnify, and hold harmless the other against any claim for brokers' fees and/or similar commissions claimed by any party claiming through them. The provisions of this Section 20.1 shall survive the Closing and conveyance of the Project Property to TCN.

21. NOTICES.

21.1 Notices required herein shall be in writing and shall be delivered either personally or by overnight by mail by a nationally recognized carrier, such as the USPS or FedEx, addressed as follows:

FOR THE CITY:

City of Naperville
Legal Department
Attention: City Attorney Mike DiSanto
400 S. Eagle St.
Naperville, IL 60540

FOR TCN:

Ron Clewer
Illinois Market President
Gorman & Company, LLC
200 N. Main Street
Oregon, WI 53575
By email: rclewer@gormanusa.com

WITH A COPY TO:

William Cummings, Esq.
Reinhart Boerner Van Deuren s.c
1000 North Water Street
Suite 1700
Milwaukee, WI 53202
By email: WCummings@reinhartlaw.com

21.2 Notice served personally or by overnight mail shall be effective the day following receipt.

22. GENERAL TERMS AND CONDITIONS.

22.1 If any term of this Agreement is ambiguous, it shall not be construed for or against either Party on the basis that the Party did or did not write it.

22.2 Unless otherwise specified as “business days”, calendar days are intended. Business days as used in this Agreement are defined as Monday through Friday, excluding Federal holidays. If the date for performance shall fall on a Saturday, Sunday or national holiday, the date for performance shall be extended to the next business day.

22.3 The Parties hereto waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, or for the enforcement of any remedy under any statute or law.

22.4 This Agreement contains the entire agreement between the Parties. All negotiations between the Parties are merged in this Agreement, and there are no understandings or agreements, verbal or written, other than those incorporated in this Agreement.

22.5 This Agreement shall not be altered, amended, changed or modified except in writing executed by the parties hereto.

22.6 Venue for any action taken by either Party, whether in law or in equity, to enforce the terms of this Agreement shall be in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois. This Agreement and the legal relations between the Parties hereto shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the conflicts of laws principles thereof.

22.7 Neither Party may assign or transfer this Agreement unless said assignment or transfer is approved in advance in writing by the other Party.

22.8 If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any paragraph, subparagraph, sentence or clause not adjudged to be invalid.

22.9 The representations set forth in this Section 22, and each subpart hereof, shall survive the Closing and conveyance of the Project Property to TCN.

22.10 All exhibits attached hereto or referenced herein shall be deemed incorporated herein and made part hereof.

22.11 Where provisions in this Agreement provide that they are to survive the Closing and conveyance of the Project Property to TCN, said provisions shall not be deemed merged into any instrument of conveyance delivered at Closing.

23. AUTHORITY TO EXECUTE.

23.1 The corporate authorities of the City warrant that they have the authority to enter into this Agreement and that the undersigned has the authority to execute this Agreement on behalf of the City.

23.2 TCN warrants that it has the authority to enter into this Agreement and that the undersigned has the authority to execute this Agreement on behalf of TCN.

24. EFFECTIVE DATE.

24.1 The effective date (“**Effective Date**”) of this Agreement shall be the date upon which it is fully executed by both Parties hereto.

EXHIBITS:

Exhibit A – Legal Description of the Property and Project Property

Exhibit B – Depiction of the Property and Project Property

Exhibit C – Major Business Terms for development and operation of the Project Property

Exhibit D – TCN Site Plan for the Project Property

Exhibit E – Access and Indemnity Agreement

THE PARTIES TO THIS AGREEMENT by their signatures acknowledge they have read and understand this Agreement and intend to be bound by its terms.

/SIGNATURES ON FOLLOWING PAGES/

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST

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

State of Illinois)
)SS
County of DuPage)

The foregoing instrument was acknowledged before me by Douglas A. Krieger, City Manager of the City of Naperville and Pam Gallahue, City Clerk for the City of Naperville this ____ day of _____, 2023.

Notary Public

Print Name

-seal-

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY AND PROJECT PROPERTY

PROPERTY:

LOTS 4, 5 & 6 OF THE NAPERVILLE-SOUTH FORTY SUBDIVISION, A SUBDIVISION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 37 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF NAPERVILLE, WILL COUNTY, ILLINOIS. RECORDED SEPTEMBER 4, 2007 AS DOCUMENT R2007-132356 IN WILL COUNTY, ILLINOIS.

P.I.N.(s): 07-01-15-101-044

AREA: 22.19 Acres

PROJECT PROPERTY:

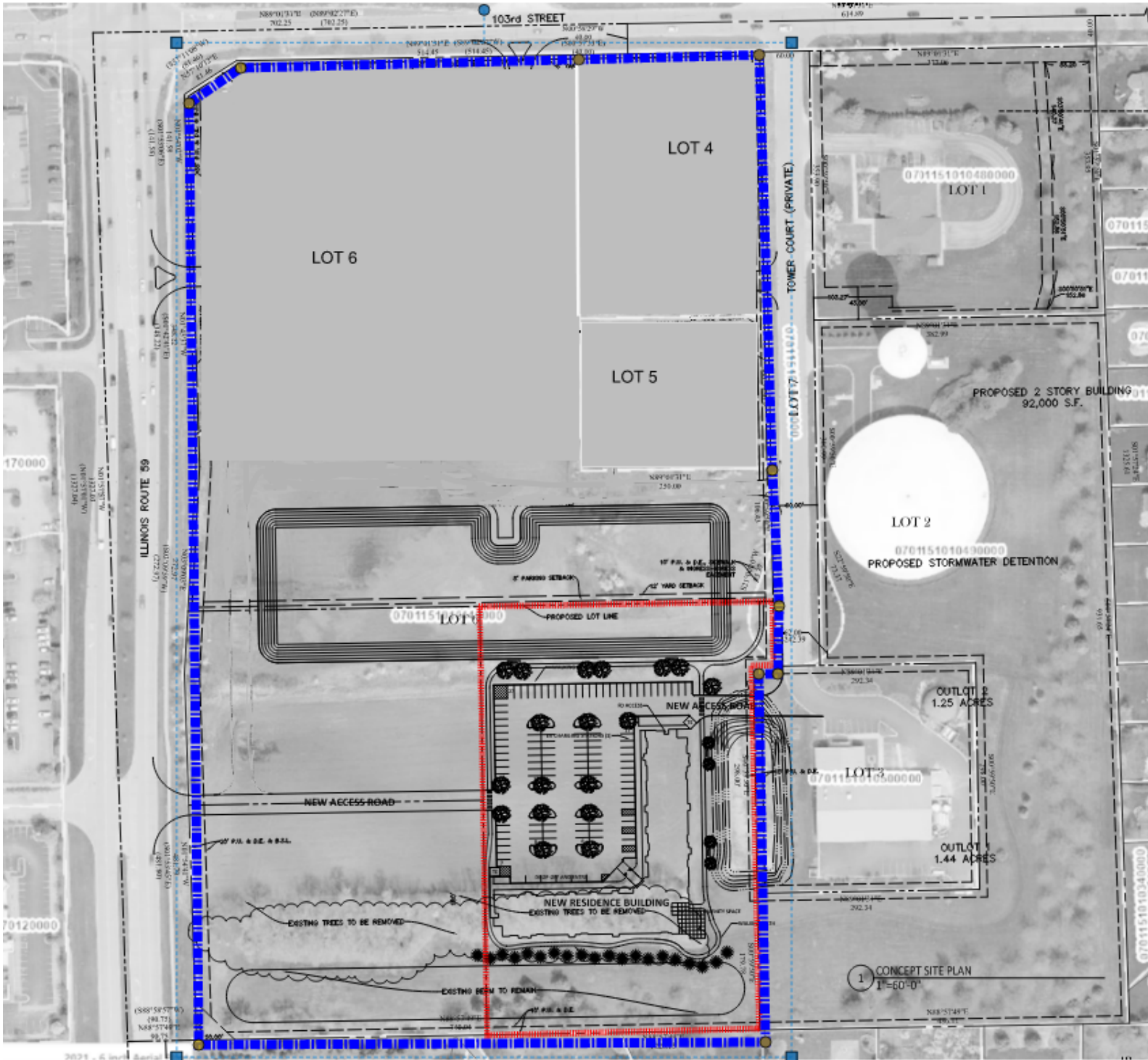
THAT PART OF LOTS 6 AND 7 IN NAPERVILLE-SOUTH FORTY SUBDIVISION, A SUBDIVISION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 37 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 4, 2007, AS DOCUMENT NUMBER R2007-132356, AND RE-RECORDED NOVEMBER 16, 2007, AS DOCUMENT NUMBER R2007-166808, IN THE CITY OF NAPERVILLE, WILL COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 6; THENCE NORTH 00 DEGREES 59 MINUTES 12 SECONDS WEST (NORTH 00 DEGREES 59 MINUTES 50 SECONDS WEST = RECORD) ALONG THE EAST LINE OF SAID LOT 6, A DISTANCE OF 477.78 FEET TO A CORNER OF SAID LOT 6, SAID CORNER ALSO BEING THE NORTHWEST CORNER OF LOT 3 IN SAID NAPERVILLE SOUTH FORTY SUBDIVISION; THENCE NORTH 89 DEGREES 01 MINUTES 31 SECONDS EAST, ALONG THE LOT LINE OF SAID LOT 6, SAID LOT LINE ALSO BEING THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 27.41 FEET TO A POINT THAT IS ON A LINE THAT BEARS SOUTH 00 DEGREES 59 MINUTES 12 SECONDS EAST (SOUTH 00 DEGREES 59 MINUTES 50 SECONDS EAST = RECORD) FROM THE NORTHWEST CORNER OF SAID LOT 7; THENCE NORTH 00 DEGREES 59 MINUTES 12 SECONDS WEST (NORTH 00 DEGREES 59 MINUTES 50 WEST = RECORD), 85.36 FEET; THENCE SOUTH 89 DEGREES 01 MINUTES 31 SECONDS WEST, 385.69 FEET; THENCE SOUTH 00 DEGREES 58 MINUTES 29 SECONDS EAST, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 563.47 FEET TO THE SOUTH LINE OF SAID LOT 6; THENCE NORTH 88 DEGREES 58 MINUTES 22 SECONDS EAST (NORTH 88 DEGREES 57 MINUTES 49 SECONDS EAST = RECORD), ALONG THE SOUTH LINE OF SAID LOT 6, A DISTANCE OF 359.40 FEET TO THE POINT OF BEGINNING.

P.I.N.: 07-01-15-101-044 [part of]

AREA = 204,195 SQUARE FEET OR 4.6876 ACRES, MORE OR LESS.

Property Common Address: 4231 Tower Court, Naperville IL 60564

EXHIBIT B DEPICTION OF PROPERTY AND PROJECT PROPERTY



LEGEND

- Property
- Project Property

EXHIBIT C

PROPERTY ADDRESS:

4231 Tower Court
Naperville, IL 60564 Naperville

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 (“**MBTs**”) for sale of certain City-owned property, referenced as the “**Project Property**” herein, to be developed as 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 Tower Court Naperville, LLC a Wisconsin limited liability company registered to transact business in the State of Illinois with its principal offices located at 200 North Main Street, Oregon, WI 53575 (hereinafter “**Developer**”).

Where words are capitalized in this document, they have the meanings set forth in Section 2 below or, if so indicated, in the Purchase and Sale Agreement.

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 sixty-two (62) and older and individuals with Intellectual Disabilities and/or Developmental Disabilities who are eighteen (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 ninety-nine (99) years (referenced herein as the “**Minimum Affordability Period**”).

The City owns a parcel of real located southeast of the intersection of IL Route 59 and 103rd Street in Naperville, IL 60564 as depicted and described on **Exhibit A** and which has a common address of 4231 Tower Court, Naperville, IL 60564 (the “**City Property**”).

Pursuant to a Purchase and Sale Agreement to which these MBTs are an exhibit, also referenced herein as the “**PSA**”, Developer proposes to purchase approximately 4.68 acres of the City

Property to develop the Project on the property delineated on **Exhibit A** (the “**Project Property**”). 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. These MBTs and the Purchase and Sale Agreement to which they are attached are intended to be read together. If there is any conflict between one or more provisions of these MBTs and the Purchase and Sale Agreement such that said provisions cannot be read to stand together, the provisions of the Purchase and Sale Agreement shall prevail. Developer and the City may agree to provisions which differ from these MBTs and the Purchase and Sale Agreement in the OAA described in Section 6 herein. The provisions of a fully executed OAA approved by Developer and the City, including all exhibits thereto, shall prevail over these MBTs and the Purchase and Sale Agreement.

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. Completed execution and recording of an Owner’s Acknowledgement and Acceptance Agreement (“**OAA**”), as defined herein, shall constitute a condition precedent to proceeding with the Project.

The OAA shall provide that to the extent of any conflict or inconsistency with the provisions of the PSA, these MBTs, and the OAA, (including but not limited to any exhibit attached to said documents), the OAA and the provisions and exhibits of the OAA shall control.

1.3 Developer shall promptly provide any entity which may acquire an interest in the Project Property, or any aspect of the Project, with a copy of the PSA, these MBTs and the OAA (as soon as the OAA has been approved by Developer and the Naperville City Council).

1.4 Capitalized words used herein have the definitions set forth herein or, if indicated, in the Purchase and Sale Agreement.

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, eighty percent (80%) 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, twenty percent (20%) 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) – Area Median Income (AMI) means the 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 – City means the City of Naperville located in Will and DuPage Counties.

2.5 City of Naperville Residents - City of Naperville Residents has the meaning set forth in Section 4.1.3 hereof.

2.6 Closing – Closing means Financial Closing and conveyance of the Project Property to the Developer as provided herein. Conveyance of the Project Property to the Developer as provided in the Purchase and Sale Agreement and as set forth herein shall denote that Financial Closing has already occurred.

2.7 Construction Phasing Plan – The Construction Phasing Plan is 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.

2.8 Construction Start Date – unless otherwise agreed in writing by the City Manager, the Construction Start Date for the Project means the date, within thirty (30) days of Closing, that TCN has given its general contractor notice to proceed which notice shall require the contractor to commence work on the Project Property within sixty (60) days therefrom.

2.9 Deed – Deed means the quit claim deed by which the City will convey the Project Property to the Developer.

2.10 Developer – The Developer is Tower Court Naperville, LLC a Wisconsin limited liability company registered to transact business in the State of Illinois with its principal offices located at 200 North Main Street, Oregon, WI 53575, and all subsequent successors, assigns and transferees.

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 Material Default – Material Default has the meaning set forth in Section 8.3 hereof.

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

2.16 Owner’s Acknowledgement and Acceptance Agreement for an Affordable Senior and IDD Housing Project (“OAA”) –OAA has the meaning set forth in Section 6 hereof.

2.17 Petition for Development Approval - The Petition for Development approval is 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.

2.18 Primary Residence - Primary Residence for the purpose of Section 4.1.3 of these MBTs is defined herein as the residence of an individual applying for residency as a Senior Resident or an IDD Resident as 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.

2.19 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.

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

2.21 Project Property – The Project Property is the real property delineated on **Exhibit A** hereto as may be modified by agreement of the Developer and the City as reflected in the OAA.

2.22 Purchase and Sale Agreement (or PSA) – The Purchase and Sale Agreement sets forth the terms and conditions related to conveyance of the Project Property to the Developer at Closing as “Closing” is defined in the PSA.

2.23 Purchase Price – The Purchase Price as used herein is the amount to be paid by the Developer for the Project Property as set forth in Section 2.1 of the Purchase and Sale Agreement.

2.24 Residents (or Project Residents) – Residents, or Project Residents, are the Senior Residents and IDD Residents who rent units within the Project.

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

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

2.27 Tenant Selection Process – Tenant Selection Process has the meaning described in Section 4.1.3 hereof.

3. PROJECT MILESTONES

The 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. [Note: other Milestones pertaining to the City providing Developer with a Phase 1 environmental site assessment of the City Property, and Developer’s application for LIHTC funding, have already occurred.]

3.1 On or before February 15, 2023 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.

3.2 On or before August 31, 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.

3.3 On or before September 30, 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 Purchase and Sale Agreement.

3.3.1 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.

3.4 Developer Finance Commitments - In a form and detail deemed satisfactory to the City’s Finance Director:

3.4.1 **On or before February 29, 2024** 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.

3.4.2 **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**”)

3.5 On or before June 30, 2024 Closing shall occur within ninety (90) days of demonstration of Final Commitments as set forth in Section 3.4.2 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.

3.6 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.

3.7 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.

3.8 Within 12 months of completion of construction and issuance of final occupancy permits as set forth in Section 3.7 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 will 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 1.1 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 seventy-one (71) residential dwelling units that shall remain Affordable for the Minimum Affordability Period which number may be reduced by agreement by Developer and the City if needed during design and construction of the Project.

4.1.2 Twenty-five percent (25%) of all residential rental units in the Project shall be allocated to IDD Residents who are age eighteen (18) years of age and older.

4.1.3 Subject to approval of the following by IHDA and HUD (or approval of some portion thereof if approval of all of the following cannot be achieved), Developer shall at all times, through their tenant selection process ("**Tenant Selection Process**") prioritize rental of dwelling units within the Project for both Senior Residents and IDD Residents in the following order of preference: (i) Current City of Naperville Residents - individuals whose Primary Residence has been in the City of Naperville for at least the twelve (12) months prior to their application for a rental unit within the Project; (ii) School District Residents - individuals whose Primary Residence has been within Naperville Community Unit School District 203 or Indian Prairie School District 204 for at least the twelve (12) months prior to their application for a rental unit within the Project; (iii) immediate family members of (i) or (ii) (immediate family members being children, parents, or siblings).

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% 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 Pet area for animal therapy.
- 4.3.6 Club house or club room which offers outdoor seating, dining, and courtyard activities.
- 4.3.7 Other amenities as desired by Project Residents as reasonably agreed to by the Developer.

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.** The Project shall 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.** The Project shall be designed in a manner: (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. Notwithstanding the foregoing, nothing in these MBTs shall be interpreted to mean a vehicle must be provided on site by the Developer.

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 **Improvements.** Improvements shall be undertaken, performed, and paid for as set forth in the Purchase and Sale Agreement to which these MBTs are attached which provisions are incorporated herein by reference as may be modified in the OAA.

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:

- 5.1 Occupancy numbers of for the past calendar year delineating types of residency as described in Paragraph 4.1 hereof.
- 5.2 Waitlist numbers at the end of the calendar year.
- 5.3 A detailed description of transportation services in conformance with the Resident Transportation Plan described in Section 4.8 above.
- 5.4 Data regarding implementation of the Resident Transportation Plan, Resident usage, and any new or additional transportation options.
- 5.5 On-site program offerings (including but not limited to the services outlined in paragraph 4.10.1 and 4.10.2 above).
- 5.6 Current and newly added amenities and facilities including but not limited to picnic, gardening, trail, classrooms, recreational facilities, equipment, and computers.
- 5.7 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.
- 5.8 Coordination with area service providers to meet Resident needs.
- 5.9 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 both in terms of construction and operations (“**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 Provisions relative to an Access Roadway from Illinois Route 59 or an Alternative Access as set forth in Section 7 and 7.1.1 of the PSA.
- 6.1.20 Reservation and future grants of easements as set forth in the PSA, including but not limited to an easement to be granted by the City pursuant to an easement agreement as set forth in the PSA for the Access Roadway as set forth in Section 7.1.1 of the PSA.
- 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 2 of the Purchase and Sale Agreement to which these MBTs are attached which provisions are incorporated herein by reference.
- 6.1.23 Intentionally Omitted.

- 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 the City and the Developer shall each be responsible for their own legal fees for all aspects pertaining to 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.
- 6.1.26 A provision requiring Illinois choice of law and venue in the Eighteenth Judicial District.
- 6.1.27 A provision indicating whether the Illinois Prevailing Wage Act shall be applicable to the Project.
- 6.1.28 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 or any law which is applicable to the Project.
- 6.1.29 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.
- 6.1.30 School and Park Donation Requirements:
- 6.1.30.1 School Donation. A school donation shall be required to be paid by Developer 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.
- 6.1.30.2 Park Donation. 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.

- 6.1.31 If the City has adopted an affordable housing and incentive ordinance prior to finalization of the OAA, the City and the Developer will work together to determine how and if the provisions thereof may be incorporated into the entitlement process for the Project.
- 6.1.32 Upon approval by the City and the Developer, the OAA shall be fully executed and recorded with the Office of the Will County Recorder; 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.
- 6.1.33 During the Affordability Period, the Developer and any successor owner of the Project Property, shall not seek or accept property tax exempt status for the Project Property.
- 6.1.34 Unless it is agreed by the City and Developer that such access point is not needed, the OAA will include a provision that Developer will cooperate with Wheatland Township relative to a second access point for ingress and egress to and from the Project Property, including but not limited to entering into cross-access easement agreement needed to achieve such access to include cost sharing provisions for the maintenance, repair, and reconstruction of such access.

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 and in the Purchase and Sale Agreement, the Developer agrees to purchase the Project Property and the City agrees to sell the Project Property as set forth in the Purchase and Sale Agreement.

8. TERMINATION AND CITY'S RIGHT TO REPURCHASE

8.1 The City shall have the right to terminate Developer's rights under the Purchase and Sale Agreement, these MBTs, and the OAA and repurchase the Project Property as the Right to Repurchase is set forth in the Purchase and Sale Agreement.

8.2 In addition to the provisions of Section 8.1 above in the event of any default under or violation of these MBTs, the Purchase and Sale Agreement and/or any OAA resulting from these MBTs, including but not limited to the Project Milestones, the party not in default or violation may 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, the Purchase and Sale Agreement, 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**”. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

8.2.1 If the Developer is unable to obtain funding commitments as set forth in Section 3.4 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, and any other right or remedy at law or equity which the City elects to pursue, including but not limited to specific performance, 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 (the “Right to Repurchase”) at the “Repurchase Price” in accordance with the terms set forth in the Purchase and Sale Agreement in addition to any other remedy it may have.

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 as referenced herein and 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.

8.4 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 TO TCN

9.1 The provisions of the Purchase and Sale Agreement are incorporated herein and part hereof by reference.

10. RESYNDICATION AND CONVEYANCE

10.1 TCN shall pay off the City Loan (the Promissory Note and Mortgage) as those terms are defined in the Purchase and Sale Agreement) in full the earlier of: (i) within thirty (30) days of any resyndication associated with the Project Property as allowed under as provided for in 26 U.S.C §42; (ii) upon the sale of all or any portion of the Project Property; or (iii) within thirty (30) years of the Effective Date of this Agreement. Notwithstanding the foregoing, TCN shall retain the right to pay the City Loan in full before prior to occurrence of any of the foregoing.

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:

Ron Clewer
Illinois Market President
Gorman & Company, LLC
200 N. Main Street
Oregon, WI 53575
Email: rclower@gormanusa.com

WITH COPIES TO:

William Cummings, Esq.
Reinhart Boerner Van Deuren s.c
1000 North Water Street
Suite 1700
Milwaukee, WI 53202
Email: WCummings@reinhartlaw.com

12. **AUTHORIZATIONS.** The undersigned warrant and represent that have read and understand this Agreement and that they are authorized to execute this Agreement.

/SIGNATURES ON FOLLOWING PAGES/

TCN/DEVELOPER

TOWER COURT NAPERVILLE, LLC, a Wisconsin limited liability company

By: Tower Court Naperville MM, LLC, a Wisconsin limited liability Company, its Managing Member

By: GEC Tower Court Naperville, LLC, a Wisconsin limited liability company, its Manager

By: Gorman & Company, LLC, a Wisconsin limited liability company, its Manager

**By: Brian Swanton
President of Gorman & Company, LLC**

State of _____)
)SS
County of _____)

The foregoing instrument was acknowledged before me by Brian Swanton, President of Gorman & Company, LLC this _____ day of _____, 2023.

Given under my hand and official seal this ____ day of _____, 2023.

Notary Public

-Seal-

My Commission Expires: _____

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

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

Date: _____

EXHIBIT D
TCN SITE PLAN FOR THE PROJECT PROPERTY

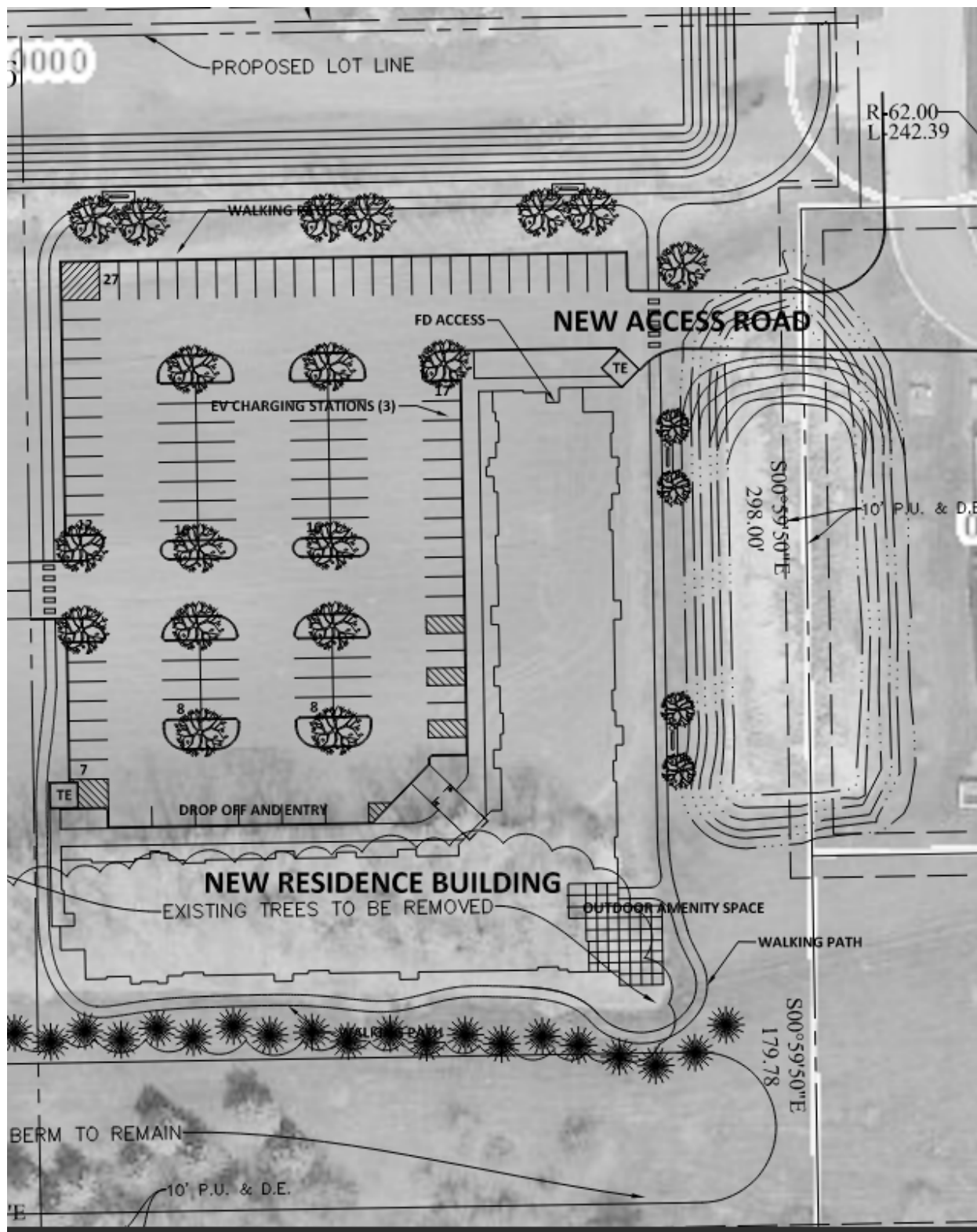


EXHIBIT E

ACCESS AND INDEMNITY AGREEMENT BETWEEN THE CITY OF NAPERVILLE AND TOWER COURT NAPERVILLE, LLC

This Access and Indemnity Agreement is made and entered into as of _____, 2023 by and between the City of Naperville with its principal offices at 400 South Eagle Street, Naperville, Illinois 60540 (referenced herein as “**City**” or “**Licensor**”) and Tower Court Naperville, LLC, a Wisconsin limited liability company registered to transact business in the State of Illinois with its principal offices located at 200 North Main Street, Oregon, WI 53575 (hereinafter “**Licensee**”).

RECITALS

Licensor owns certain real property legal described on **Exhibit A** and depicted on **Exhibit B** attached hereto and made part hereof and which has a common address of 4231 Tower Court, Naperville, IL 60564 (“**Property**”).

Licensee desires to have access to the Property for purposes of performing geotechnical tests and a Phase II Environmental Site Assessment (the “**Tests**”) and Licensor agrees to permit such access as provided herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, receipt of which is hereby acknowledged, it is agreed:

Access. Licensor hereby grants Licensee and its agents, consultants, contractors and subcontractors (collectively “Licensee’s Representatives”) reasonable access to the Property for the purpose of conducting the Tests.

Permits. Licensee shall obtain, at its expense and prior to any access to the Property by Licensee and/or its Representatives all necessary permits and authorizations of whatever nature from any and all governmental agencies. In connection therewith, Licensee will comply and will cause its Representatives to comply with all applicable federal, state and local laws, regulations, permits, permit conditions, standards, directives, guidelines, and judicial and administrative orders and decrees currently existing and as amended, enacted, issued or adopted in the future.

3. Results of Testing: Within five (5) business days of receipt by Licensee, Licensee shall disclose and furnish copies to the City Engineer of the results (including but not limited to all technical data and laboratory reports) of any sampling and analytical tests of any kind performed on the Property.

4. Notice: Licensee shall give advance notice to the City Engineer prior to any entry onto the Property to conduct any work related to the Tests. Licensor and/or its representatives shall have the right to accompany and observe Licensee and/or their Representatives during Licensee’s and/or their Representatives’ performance of all such work and activities upon the Property.

5. Minimum Disturbance. Licensee and its Representatives shall perform all work on the Property permitted hereunder with such care and diligence as will avoid accident, damage or harm to persons or property.

6. Condition of the Property. At all times during the term of this Agreement and in connection with Licensee's and/or its Representatives' access to the Property, Licensee shall, at its own cost and expense, take any necessary action to restore the Property and any improvements and personalty thereon, and all facilities appurtenant thereto, to substantially the same condition immediately prior to the testing, including, without limitation, ensuring that any holes, ditches or other indentations as well as any mounds or other inclines created by any excavation, are regraded and resurfaced to conform to the requirements of this paragraph.

7. Repair. Unless otherwise agreed to in writing by the City Engineer, if any portion of the Property suffers damage by reason of the access of Licensee or its Representatives to the Property and/or any analysis or testing performed, Licensee shall, at its sole cost and expense immediately repair all such damage or replace any damaged portion of the Property and restore the Property to its condition prior to the occurrence of such damage.

8. Assumption of Risk and Waiver. Except in the event of gross negligence or willful misconduct by Licensor, its employees, agents, and customers, Licensor shall not be responsible for any loss, damage or injury of any kind to any person or property arising from any access to or use of the Property by Licensee and/or its Representatives or caused by any defect in any building, structure or other improvement on the Property or in any equipment or other facility on the Property, or caused by or arising from any act or omission of Licensee and/or any of its Representatives, or by or from any accident on the Property or any fire or other casualty thereon, or occasioned by the failure of Licensor to maintain the Property in safe condition, or arising from any other use whatsoever. Licensee, on behalf of itself and its Representatives, as a material part of the consideration for this Agreement hereby waives all claims and demands against Licensor and its officers, officials, agents, and employees for any such loss, damage or injury of Licensee and/or its Representatives. The provisions of this paragraph shall survive the termination of this Agreement.

9. Indemnification. Except in the event of gross negligence or willful misconduct by Licensors or their employees, agents, or tenants, Licensee agrees to protect, indemnify, defend, and hold harmless Licensors, their officers, officials, agents and employees from and against any and all liabilities, claims, demands, suits, judgments, causes of action, losses, damages, costs, injuries, or penalties resulting directly from Licensee's testing, access or use of the Property, pursuant to this Agreement, or in connection with Licensee's and/or its Representatives' activities on the Property. No such indemnification or protection shall extend to the current environmental condition of the Property. The provisions of this paragraph shall survive the termination of this Agreement.

10. Insurance. Licensee shall require any contractor performing any Tests on the Property to provide Licensor/the City Attorney with a certificate of insurance and additional insured endorsement evidencing insurance coverage under Commercial General Liability, Contractors Pollution Liability, and Errors and Omissions Liability insurance policies from a source and in a form reasonably acceptable to Licensor and naming the City of Naperville and its

officers, officials, agents, and employees as additional insureds. Said certificate of insurance and additional insured endorsement shall be received and approved by the City Attorney prior to contractor accessing the Property.

11. Choice of Law. 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.

12. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. 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.

14. Notice. All notices and demands which any party is required or desires to give to any other shall be given in writing by personal delivery, by express courier service or by certified mail, return receipt requested, to the address set forth below for the respective party. All notices and demands shall be effective only upon receipt by the party to whom notice or a demand is being given.

To Licensor:

Mike DiSanto, City Attorney
Naperville Municipal Center
Attn: Legal Department
400 South Eagle Street
Naperville, IL 60540

With a copy to:

William Novack, City Engineer
Naperville Municipal Center
Attn: Transportation, Engineering, and Development Dept.
400 South Eagle Street
Naperville, IL 60540

To Licensee:

Ron Clewer
Illinois Market President
Gorman & Company, LLC
200 N. Main Street
Oregon, WI 53575
By email: rclewer@gormanusa.com

WITH A COPY TO:

William Cummings, Esq.
Reinhart Boerner Van Deuren s.c
1000 North Water Street
Suite 1700
Milwaukee, WI 53202
By email: WCummings@reinhartlaw.com

15. Execution in Counterparts. This Agreement may be executed in counterparts, each of which, when executed, shall be deemed to be an original, but which together shall constitute one and the same instrument.

16. Authorizations. The undersigned warrant and represent that have read and understand this Agreement and that they are authorized to execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Access and Indemnity Agreement to be executed by their duly authorized representatives as of the day and year first above written.

CITY OF NAPERVILLE [LICENSOR]

By: _____
Douglas A. Krieger
City Manager

ATTEST

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

Date: _____

TCN/DEVELOPER [LICENSEE]

TOWER COURT NAPERVILLE, LLC, a Wisconsin limited liability company

By: Tower Court Naperville MM, LLC, a Wisconsin limited liability Company, its Managing Member

By: GEC Tower Court Naperville, LLC, a Wisconsin limited liability company, its Manager

By: Gorman & Company, LLC, a Wisconsin limited liability company, its Manager

**By: Brian Swanton
President of Gorman & Company, LLC**

State of _____)
)SS
County of _____)

The foregoing instrument was acknowledged before me by Brian Swanton, President of Gorman & Company, LLC this _____ day of _____, 2023.

Given under my hand and official seal this ____ day of _____, 2023.

Notary Public

-Seal-

Exhibit A
Property Description

Property Address: 4231 Tower Court, Naperville IL 60564

Permanent Tax Number (P.I.N.): 07-01-15-101-044 [part of]

PROJECT PROPERTY:

Legal Description:

THAT PART OF LOTS 6 AND 7 IN NAPERVILLE-SOUTH FORTY SUBDIVISION, A SUBDIVISION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 37 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 4, 2007, AS DOCUMENT NUMBER R2007-132356, AND RE-RECORDED NOVEMBER 16, 2007, AS DOCUMENT NUMBER R2007-166808, IN THE CITY OF NAPERVILLE, WILL COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 6; THENCE NORTH 00 DEGREES 59 MINUTES 12 SECONDS WEST (NORTH 00 DEGREES 59 MINUTES 50 SECONDS WEST = RECORD) ALONG THE EAST LINE OF SAID LOT 6, A DISTANCE OF 477.78 FEET TO A CORNER OF SAID LOT 6, SAID CORNER ALSO BEING THE NORTHWEST CORNER OF LOT 3 IN SAID NAPERVILLE SOUTH FORTY SUBDIVISION; THENCE NORTH 89 DEGREES 01 MINUTES 31 SECONDS EAST, ALONG THE LOT LINE OF SAID LOT 6, SAID LOT LINE ALSO BEING THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 27.41 FEET TO A POINT THAT IS ON A LINE THAT BEARS SOUTH 00 DEGREES S9 MINUTES 12 SECONDS EAST (SOUTH 00 DEGREES 59 MINUTES 50 SECONDS EAST = RECORD) FROM THE NORTHWEST CORNER OF SAID LOT 7; THENCE NORTH 00 DEGREES 59 MINUTES 12 SECONDS WEST (NORTH 00 DEGREES 59 MINUTES 50 WEST = RECORD), 85.36 FEET; THENCE SOUTH 89 DEGREES 01 MINUTES 31 SECONDS WEST, 385.69 FEET; THENCE SOUTH 00 DEGREES 58 MINUTES 29 SECONDS EAST, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 563.47 FEET TO THE SOUTH LINE OF SAID LOT 6; THENCE NORTH 88 DEGREES 58 MINUTES 22 SECONDS EAST (NORTH 88 DEGREES 57 MINUTES 49 SECONDS EAST = RECORD), ALONG THE SOUTH LINE OF SAID LOT 6, A DISTANCE OF 359.40 FEET TO THE POINT OF BEGINNING.

AREA = 204,195 SQUARE FEET OR 4.6876 ACRES, MORE OR LESS.