

PROPERTY ADDRESS:

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

P.I.N.

01-15-101-044 [part of]

RETURN TO:

City of Naperville

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

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

The following list sets forth the Major Business Terms (“**MBTs**”) for a Lease Agreement between the City of Naperville (“**City**” or “**Lessor**”) and Gorman & Company, LLC (“**Lessee**”) in order for Lessee to construct and operate a mixed use residential development on City-owned property to provide affordable housing for seniors and for individuals with intellectual disabilities and/or developmental disabilities (the “**Project**” as defined herein).

Where words are capitalized herein, they have the meanings set forth above and in Section 2 below.

1. PROJECT DESCRIPTION.

1.1 The City of Naperville seeks to facilitate and promote the construction and operation of a residential development Project which will provide a mix of Affordable rental housing for Seniors who are 62 and older and individuals with Intellectual Disabilities and/or Developmental Disabilities who are 18 and older in order to reduce housing gaps identified in the City of Naperville 2020 Housing Needs Assessment/Housing Needs Report. The Project shall remain Affordable as defined herein for a minimum of 99 years (referenced herein as the “Minimum Affordability Period”).

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

Lessee proposes to develop approximately 6.1 acres of the City Property for the Project as depicted on **Exhibit A** (the “**Property**”). The exact location and acreage of the Property may be modified by agreement of the City and the Lessee as reflected in the Lease, as defined herein. The location of the Property and its intended use as set forth herein is consistent with the City of Naperville 2022 Land Use Master Plan.

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

1.3 Lessee shall provide any entity which may acquire an interest in the Property, or any aspect of the Project, a copy of these MBTs and any Lease resulting from these MBTs, the provision of which shall put such entity on notice of the provisions contained herein.

1.4 Capitalized words herein have the definitions set forth herein.

1.5 Project Contingencies. The following issues must be resolved prior to proceeding with a Lease Agreement as set forth herein. Those contingencies are:

1.5.1 City of Naperville zoning approval for a variance from 50% brick façade to 30% brick façade.

1.5.2 Award and receipt of DuPage County HOME funds in an amount not less than 1.9 million dollars by September 30, 2023.

1.5.3 Reduction of property tax obligations owed by the Lessee in a manner consistent with COVID-19 Affordable Housing Grant Program Act.

If any of the above contingencies are not met, or if either party believes that they will not be met, either party may terminate this Agreement at any time and neither party shall have any further liability hereunder.

2. DEFINITIONS.

2.1 **Affordable** (or **Affordability**) - has the following meaning:

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

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

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

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

Upon written request of the Lessee 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 Lease payment** – has the meaning set forth in Section 7 hereof.
- 2.2 **Annual Report** – Annual Report has the meaning set forth in Section 5 hereof.
- 2.3 **Area Median Income (AMI)** - Maximum annual income limits as reported by the most recent Illinois Housing Development Authority, or any successor agency, for the Chicago Metropolitan Statistical Area (which includes DuPage and Will Counties), adjusted for household size.
- 2.4 **City of Naperville Residents - City of Naperville Residents** has the meaning set forth in Section 4.1.3 hereof.
- 2.5 **Code** – The Naperville Municipal Code, as amended from time to time.
- 2.6 **Construction Phasing Plan** – A document detailing the timing of installation of the Project Improvements as defined herein.
- 2.7 **Construction Start Date** – the Construction Start Date for the Project means the date upon which: (i) a site permit has been issued by the City for the Project Property; and (ii) sufficient work has been completed such that the Developer has requested its first City inspection.
- 2.8 **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.
- 2.9 **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.
- 2.10 **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.

2.11 **Initial Lease Payment** - has the meaning set forth in Section 7 hereof.

2.12 **Lease Agreement or Lease** – the Ground Lease Agreement between the City of Naperville and Gorman & Company, LLC or its affiliate which sets forth the terms and conditions related to construction and operation of the Project including but not limited to all payment provisions as outlined in Section 7 hereof.

2.13 **Lease Commencement Date** – has the meaning set forth in Section 3.7 hereof.

2.14 **Lease Term** - has the meaning set forth in Section 6.1 hereof.

2.15 **Lessee** – Gorman & Company, LLC.

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

2.17 **Minimum Affordability Period** – Minimum Affordability Period has the meaning set forth in Section 1.1 hereof.

2.18 **Ordinances** – City of Naperville ordinances approving entitlements affecting the Property with respect to the Project.

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

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

2.21 **Project** – the Project is the development to be constructed and operated on the Property which is the subject of these Major Business Terms. Lessee may structure development of the 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. All improvements constructed by Lessee on the Property are referenced herein as the Project Improvements.

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

2.23 **Project Improvements** –Project Improvements include all construction on the Property, including but not limited to the items described in Sections 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 (design features only), and 4.9 hereof. Project Improvements also includes installation of offsite electric utility referenced in Section 4.9.2 and the sidewalk extension along Tower Drive to 103rd Street referenced in Section 4.9.4.

2.24 **Property** – the 6.1 acres of real property delineated on Exhibit A hereto as may be modified by agreement of the Lessee and the City as reflected in the Lease Agreement.

2.25 **Re-syndication** – means a subsequent allocation of low income housing tax credits (LITCH) on a qualified project that served as LITCH housing pursuant to 26 U.S.C. Section 42(d)(2)(b).

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

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

2.28 **Senior Residents** –means individuals who are sixty-two (62) years of age or older.

3. PROJECT MILESTONES.

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

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

3.2 **On or before October 28 of 2022 [anticipated date]** Lessee will apply for LIHTC funding for the Project at the next available 9% application period following approval and execution of these Major Business Terms.

3.3 **On or before December 31, 2022** Lessee 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 Property. The City Zoning Administrator shall issue a letter: (i) verifying that the City has received Lessee's Petition for Development Approval; and (ii) setting forth the process by which it is anticipated that the Lessee will finalize Property zoning and subdivision entitlements.

3.4 **On or before August 31 of 2023** Lessee and City shall finalize a Lease Agreement for the Project as described in Section 6 hereof.

3.5 On or before September 30 of 2023 City Council will consider, and may approve, Lessee’s Petition for Development Approval (i.e. all requested zoning entitlements and subdivision requests including the Lease Agreement signed by the Lessee) and the Lease Agreement.

3.5.1 The Project entitlements, including all City Ordinances, shall be approved prior to or concurrently with execution of the Lease Agreement. The Ordinances shall be recorded with the Will County Recorder at the same time the Lease Agreement and final Project documents are recorded.

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

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

3.6.2 **On or before June 30, 2024** Lessee 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.

3.7 At Financial Closing – Lessee shall execute the Lease Agreement (“**Lease Commencement Date**”) and pay the Initial Lease Payment.

3.8 Within sixty (90) days of the Lease Commencement Date, Lessee shall commence construction (defined herein as the Construction Start Date) of the Project and shall complete construction of the Project Improvements within the Project Timeline set forth in in the Lease Agreement in accordance with any and all required City, Will County, and State permits.

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

3.10 Within 12 months of completion of construction and issuance of final occupancy permits as set forth in Section 3.9 above, Lessee shall complete leasing the Senior and IDD residential rental units. Each tenant lease shall clearly reference the recording number of the Lease Agreement with the City of Naperville with an explanation that the Lease Agreement contains details regarding the Project.

4. PROJECT COMPONENTS.

Lessee 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 Lessee at Lessee’s cost as follows:

4.1 Tenant Mix and Resident Preference.

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

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

4.1.3 Subject to approval by IHDA and HUD, Lessee shall at all times prioritize rental of dwelling units within the Project for individuals whose Primary Residence has been the City of Naperville for twelve (12) consecutive months preceding their application and for their immediate family members (defined as children, parents, or siblings) irrespective of Primary Residence.

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

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

4.3.1 Trails, with amenities providing respite areas for those with limited mobility and endurance (with areas of shade and sun), and pet-friendly features.

4.3.2 Conveniently located picnic/grilling and fire pit/outdoor gathering areas.

4.3.3 Gardens – including raised planting bed features.

4.3.4 Combination of manicured and natural areas.

4.3.5 Pickleball courts or other amenity as requested by the majority of stakeholders and agreed to by Lessee during the planning process.

4.3.6 Pet area for animal therapy.

4.3.7 Club house or club room which offers outdoor seating, dining, and courtyard activities.

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

4.4.1 Conveniences, including but not limited to laundry and refuse facilities on each floor that has residential units.

4.4.2 Formal and informal Resident gathering and meeting spaces of varying sizes to accommodate concurrent activities and lifestyle choices and to accommodate visitors.

4.4.3 Technology accessible classrooms and/or computer labs.

- 4.4.4 Exercise space and facilities such as a fitness area with weight and cardio machines (with focus on safety and equipment usage signage), and a group fitness class area.
 - 4.4.5 Community kitchen for resident use.
 - 4.4.6 Mail room.
 - 4.4.7 On-site wi-fi.
 - 4.4.8 Cable ready units throughout the Project and a master antenna to access local channels.
 - 4.4.9 Office spaces for use of Resident service providers.
- 4.5 **Sustainability.** Utilize environmentally-friendly and sustainable construction materials and design practices, aligned with a recognized national program with goals for sustainable excellence such as LEED, Energy Star, Enterprise Green Community, which may include a combination of:
- 4.5.1 Utilization of renewable energy sources.
 - 4.5.2 Electric vehicle charging facilities.
 - 4.5.3 All-electric unit appliances.
 - 4.5.4 Diversion of construction waste from landfills and incinerators.
 - 4.5.5 Stormwater Management.
 - 4.5.6 Open space preservation and native landscaping.
 - 4.5.7 Composting.
- 4.6 **Accessibility.** A commitment to accessibility through application of the Illinois Accessible Code, AARP recommendations, and universal design approaches to consider sensory, cognitive and physical impairments. At a minimum the Project shall include:
- 4.6.1 Not less than ten percent (10%) of all residential units in the Project shall be constructed as Type A units in accord with the ANSI Standard ICC A117.1 in Chapter 11 of the International Building Code 2018 (IBC 2018).
 - 4.6.2 All units to include universal design features (e.g. lever door handles, rocker light switches, look handles on doors and drawers (no knobs), grab bars and non-skid surfaces in bathrooms, handheld shower heads, side-by-side refrigerators, front controls on all appliances, etc.).
 - 4.6.3 Consistent and vibrant lighting to make discerning contrasting materials easier to identify for visually impaired.
 - 4.6.4 Front loading washers and dryers on raised platforms in all laundry areas.
- 4.7 **Quality design:** (i) that is compliant with the Naperville Municipal Code and adopted regulations then in effect (unless variances are approved), including but not limited to bulk limitations; and (ii) which reflects the character and context of residential development in the general vicinity with respect to scale, style, height, and exterior finishes.

- 4.8 **Transportation.** Project Residents will have unique transportation needs that must be addressed through a combination of design features (e.g., covered loading/unloading areas, areas for bicycle parking and storage, provisions for accessible parking beyond minimum standards) and also a plan for providing transportation services for both IDD Residents and Senior Residents who do not have access to, or who are unable to, drive personal vehicles. Transportation services need to be regular, convenient, meet basic service needs (e.g., medical appointments, grocery shopping, cultural events, etc.) and be provided either free of charge or at a reasonable cost.

While public transportation options will be available to some extent, the Lessee 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 Lease Agreement.

Notwithstanding the foregoing, nothing in these MBTs shall be interpreted to mean a vehicle must be provided on site by the Lessee for Resident transportation purposes.

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

- 4.9.1 Stormwater management will need to be provided for the Property in a manner that will not negatively affect the detention volume currently serving the adjacent Wheatland Township Facility. Subject to approval by the City Engineer, Lessee shall design and construct the Project so that the Property provides stormwater storage for both the Property and 1.99 acre feet which represents storage for upstream properties and shall not charge for said 1.99 acre feet of storage.
- 4.9.2 Lessee will be responsible for the cost to extend the electric utility from Illinois Route 59 to the Property. Lessee will be entitled to a recapture agreement for the actual costs of extending utilities from other benefitting properties as those properties develop, as other benefitting properties are identified by the Department of Public Utilities-Electric subject to requirements set forth in the Lease Agreement for establishing the recapture agreement.
- 4.9.3 Lessee will be obligated to pay recapture amounts required for Watermain and Sanitary Sewer to Wheatland Township; and pay a recapture to the City for the wastewater pump station and force main. Said recapture costs shall be specified in the Lease Agreement.
- 4.9.4 Lessee will be responsible to construct the sidewalk extension along Tower Drive to 103rd Street. A timeframe for construction will be agreed upon by the Lessee and the City.

4.10 **Services for Senior Residents and IDD Residents**

- 4.10.1 Senior Services shall be provided to assist Senior Residents with independent living needs (e.g. money management, assistance referrals, prescription assistances,

benefit counseling, grocery shopping, transportation, etc.) and improvement of Residents' quality of life and sense of community connection (e.g. exercise programs, educational programs, crafting, cards/games, social events, volunteer opportunities, etc.).

4.10.2 IDD Services shall be customized to provide for the needs of IDD Residents ranging from limited assistance for independent living (e.g. prescription management, light housekeeping, budgeting, etc.) to wrap-around case management, and improvement of Residents' quality of life and sense of community connection (e.g. exercise programs, educational programs, crafting, cards/games, social events, volunteer opportunities, etc.).

4.10.3 Transportation services shall be provided in conformance with a Resident Transportation Plan as set forth in Section 4.8 hereof.

5. ANNUAL REPORT.

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

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

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

6. LEASE AGREEMENT.

- 6.1 Lease Term. The term of the Lease shall be from the Lease Commencement Date for a period of ninety-nine (99) years after which the Lease shall automatically renew each year upon not less than one hundred and twenty (120) calendar days' notice.
- 6.2 The form of the Lease Agreement shall be finalized and attached as an exhibit to the ordinance submitted to the Naperville City Council approving subdivision of the City Property to create a separate lot for the Property; however, the Lease Agreement shall be executed pursuant to the timeframe set forth in Section 3.7 hereof. The Lease Agreement shall contain, but shall not be limited to, the Major Business Terms set forth herein, the provisions of the Ordinances and Code provisions applicable to the Property, other applicable laws, and other terms and provisions including but not limited to:
- 6.2.1 The Project Milestones described in Section 3 hereof.
 - 6.2.2 The Minimum Affordability Period for the Project set forth in Section 1.1 hereof.
 - 6.2.3 The total number of Senior Resident rental units.
 - 6.2.4 The total number of IDD Resident rental units (not less than 25% of all units).
 - 6.2.5 A legal description and depiction of the Property.
 - 6.2.6 The Project site plan.
 - 6.2.7 Project building elevations and materials.
 - 6.2.8 A description of the phasing of the Project (“**Project Timeline**”).
 - 6.2.9 Final engineering for the Project plans.
 - 6.2.10 Engineer’s Opinion of Probable Construction Cost (“EOPC”).
 - 6.2.11 Final landscaping plans.
 - 6.2.12 Final photometric plan.
 - 6.2.13 A trip-generation report.
 - 6.2.14 A stormwater management report.
 - 6.2.15 Final Parking Plan.
 - 6.2.16 Other plans, studies, or reports reasonably requested by the City.
 - 6.2.17 Surety for public improvements to be provided by the Lessee to the City in an amount approved by the City Engineer and in a form approved by the City Attorney.
 - 6.2.18 Each of the Project Components set forth in Section 4 hereof.
 - 6.2.19 Reservation by the City of a cross-access easement on the Property to connect the Property to property to the west - dependent on Lessee’s site plan. Public utility and drainage easements will also be reserved.

- 6.2.20 A provision that all Project Improvements will be constructed in accordance with all laws, Ordinances, Code provisions, and rules and regulations, as amended from time to time, of all governmental entities having jurisdiction of said Property and Project Improvements.
- 6.2.21 A provision that the City of Naperville will seek approval from the Illinois Department of Transportation (IDOT) to construct an access point to Illinois Route 59 that will provide access to and from the Property and other properties. It is anticipated that the project will include design and construction of a left turn lane, right turn deceleration lane, and access point by the City of Naperville. A two-way vehicular roadway between the new Illinois Route 59 access and the Property shall also be designed and constructed by the City.
- 6.2.22 A requirement of timely payment by the Lessee of all required City of Naperville and applicable County and State application, plan review, permit, and inspection fees.
- 6.2.23 A requirement for Lease payments to be made as outlined in Section 7 hereof.
- 6.2.24 A provision that for the Minimum Affordability Period the Lease Agreement will be binding upon all future lessees, transferees, assignees, and sublessees. The Project and the Lease Agreement shall not be assigned, transferred, or subleased by the Lessee in whole or in part (or any successor to the Lessee) to any other entity or person without the prior written consent of the City.
- 6.2.25 A provision that the City and the Lessee shall each be responsible for their own legal fees for all aspects pertaining or associated with the Project, including but not limited to these Major Business Terms, the design and development of the Property, entitlements, and the negotiation of the Lease Agreement.
- 6.2.26 A provision requiring Illinois choice of law and venue in the Eighteenth Judicial District.
- 6.2.27 A provision that if any provision of the Lease Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts or provisions thereof.
- 6.2.28 A provision that the Lease Agreement does not confer or create any rights or benefits in favor of any person or entity as a third party beneficiary.
- 6.2.29 A provision indicating whether the Illinois Prevailing Wage Act shall be applicable to construction of the Project and to any future reconstruction or new construction on the Property.
- 6.2.30 A provision limiting the City's liability arising from the condition of the Property and Project Improvements and the conduct and operation of the

Project and that the Lessee shall defend, indemnify, and hold the City and its officers, agents, and employees harmless for any aspect of the design and construction of the Project Improvements and future improvements and all aspects of the operation of the Project.

6.2.31 Provisions related to breach of the terms of the Lease Agreement, opportunity to cure, no waiver of successive breaches, the right of the parties to take any actions they deem appropriate to enforce the Lease 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 losing party to pay attorneys' fees and costs in the event of litigation between the parties in which one party prevails as determined by a court of competent jurisdiction.

6.2.32 School and Park Donation Requirements:

6.2.32.1 School Donation. A school donation shall be required under the land-cash provisions set forth in Section 7-3-5 of Naperville Municipal Code, as amended from time to time, as negotiated by the Lessee with School District #204 and approved by the City.

6.2.32.2 Park Donation. The Lessee 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 Lessee, 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 Lessee.

6.2.33 If the City adopts an affordable housing ordinance prior to finalization of the Lease Agreement, the City and the Lessee will work together to determine how and if it may be incorporated into the entitlement process for the Project.

6.2.34 Provisions requiring Lessee to obtain Builder's Risk insurance and to insure the Project Improvements in amounts approved by the City pursuant to insurance policies in which the City and its officers, agents, and employees are named as an additional insureds to the full limits of liability purchased by Lessee/Contractors even if those limits of liability are in excess of those required by this Lease. Lessee's/Contractors' insurance coverage will be written as primary policies not contributing with and not secondary to insurance the City may have or to the City's self-insurance and shall include a waiver of subrogation rights which any insurer of a party may acquire by virtue of the payment of any loss and shall obtain any endorsement that may be necessary to effectuate such waiver of subrogation. All insurance policies shall be written with insurance companies licensed or authorized

to do business in the State of Illinois and having a rating of not less than A - VII according to the A.M. Best Company.

- 6.2.35 A provision that if, as a result of a Phase 2 environmental site assessment, it is determined that environmental remediation is needed on the Property, the City will undertake remediation of the Property at the City's expense so that it can be used for the purposes set forth in the Lease. Lessee shall be responsible not to cause, or allow to be caused, any environmental contamination on the Property. Lessee shall be responsible for costs of remediation of any environmental damage to the Property caused by the Lessee or its contractors, agents, or employees.
- 6.2.36 Inclusion or reference to reduction of property tax obligations owed by the Lessee in a manner consistent with COVID-19 Affordable Housing Grant Program Act.
- 6.2.37 A provision that Lessee will be responsible for taxes, fees, fines, or assessments of any kind associated with the Project or Property, including but not limited to any income taxes.
- 6.2.38 A provision that all costs, expenses, liabilities, charges, or deductions with respect to the Property, including but not limited to the construction, repair, and maintenance of improvements thereon shall be the responsibility of Lessee.
- 6.2.39 A provision that title to all Project Improvements shall exclusively vested in Lessee at all times the Lease Agreement is in effect. In the event of expiration of the Lease Agreement, title to all Project Improvements shall exclusively vest in the City. Upon termination of the Lease Agreement, title to all Project Improvements shall exclusively vest in the City except to the extent that the City has given prior written approval of encumbrances on the Property.
- 6.2.40 A provision that no structural additions of any kind shall be made to the Project Improvements or on the Property without the prior written approval of the City.
- 6.2.41 A provision that certain provisions of the Lease Agreement, including but not limited to payment provisions and defense and indemnification provisions shall survive the expiration or termination of the Lease Agreement.
- 6.2.42 A provision that if the Project Improvements are destroyed or damaged in whole or in part by casualty, Lessee shall notify the City within twenty-four hours and take those steps identified in the Lease Agreement to restore or reconstruct the Project Improvements at no cost to the City.

- 6.2.43 A provision that Lessee will be responsible for, at a minimum, an annual maintenance inspection of each Resident unit by the manager or maintenance supervisor and for the proper and timely upkeep of each unit.
- 6.2.44 Provisions that Lessee will cause the Property to be maintained in good repair and in a decent, safe, and sanitary condition in accordance with HUD's physical conditions standard, as set forth in 24 C.F.R. §5.703. Further, that Lessee will systematically investigate all service requests it receives from Residents, take such action thereon as may be necessary to promptly respond to such requests and keep and maintain records of the same.
- 6.2.45 A provision that the City, upon reasonable prior notice to Lessee, and to residents as may be required by applicable law, shall have the right to enter the Property and the Project Improvements, and to review the service request records, for purposes of conducting reasonable inspections performed during reasonable business hours to assure compliance by Lessee with its obligations under the Lease Agreement.
- 6.2.46 A provision that neither Lessee, nor anyone acting on Lessee's behalf, shall be deemed an agent, employee, joint employee, or servant of the City; that neither Lessee; that neither Lessee or anyone acting on Lessee's behalf, shall have any right to act on behalf of or bind the City for any purpose; and that Lessee shall be responsible for all risks incurred in the construction of the Project Improvements and the operation of the Project.

7. LEASE PAYMENTS.

7.1 In consideration of Lessee's design and construction of the Project, operation of the Project throughout the Minimum Affordability Period in compliance with the Lease Agreement and all applicable ordinances and Code provisions, and in consideration for the City undertaking the Route 59 access improvements described in Section 6.2.20 above, Lessee agrees to make the following Lease payments:

7.1.1 An initial Lease payment to the City of five hundred and seventy thousand dollars (\$570,000.00) ("**Initial Lease Payment**") to be paid on the Lease Commencement Date.

7.1.2 Lessee shall pay the City thirty thousand dollars (\$30,000) on the anniversary of the Lease Commencement Date for each of the first thirty (30) years of the Lease Period (the "**Annual Lease Payment**").

8. TERMINATION.

8.1 If Lessee has not begun construction (defined herein as the Construction Start Date) of the Project on the Property within three (3) years of the Lease Commencement Date, the City shall have the right, but not the obligation, to terminate the Lease upon sixty (60) days of written notification to the Lessee of the City's decision to terminate the Lease. Such notice shall be given at to the Lessee at the address set forth in Section 11 hereof.

8.2 Except as provided in Section 8.1 above, and in addition thereto, in the event of any default under or violation of the Ordinances, these MBTs or the Lease Agreement resulting from these

MBTs, including but not limited to the Project Milestones, the party not in default or violation shall serve written notice upon the party in default or violation, which notice shall be in writing and shall specify the particular default or violation. The parties reserve the right to cure any violation of or default within thirty (30) days following written notice thereof. If such default is cured within said thirty (30) day period, all terms and conditions of these MBTs, or the Lease Agreement 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 one-hundred eighty (180) 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 one-hundred eighty (180) day extension period as may, in the sole discretion of the non-defaulting party, be reasonably necessary to cure said default. The foregoing period(s) of time shall be referenced in this Section 8 as the “**Cure Period**”.

8.2.1 If the Lessee is unable to obtain funding commitments as set forth in Section 3.6 above, and needs additional time to secure such funding such that the above-described Cure Period is not achievable, the Lessee shall the notify the City to that effect, and the Parties shall agree upon a revised Project Milestone schedule and Cure Period. Nothing herein shall require the City to approve a second extension on this basis.

8.3 In addition to the provisions set forth above, either party hereto may terminate these MBTs, or any Lease Agreement resulting from these MBTs, if the other party fails to cure a default during the Cure Period provided in Section 8.2 above. Written notice of default (“**Notice of Default**”) identifying the basis of the default shall be provided to the other party. If the City terminates the MBTs or the Lease Agreement as a result of one or more Material Defaults by the Lessee, as defined below, the City shall provide notice of termination (“**Notice of Termination**”) to the Lessee.

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 Lease Agreement; (iii) failure to implement and utilize a tenant selection process in accord with the Lease Agreement; (iv) Lessee’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 Property; or (v) a petition is filed against the Lessee 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 the provisions of these MBTs, or the Lease Agreement which results from these MBTs, or the Ordinances which are not listed above in the Material Default provisions.

8.5 Any termination of the Lease either agreed to by the City and the Lessee or based on default by the Lessee that occurs before the initial thirty (30) year payments have been made in full shall result in the balance of those payments being due to the City from Lessee within ninety (90) days of notice from the City, or such other timeframe as agreed to by the City Council.

8.6 The City shall be entitled to reimbursement for its attorneys' fees and costs from the Lessee, 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.

8.7 The City acknowledges that the Lessee's investor will need to approve all of the terms and conditions of the Lease Agreement.

9. RESYNDICATION.

9.1 During the Minimum Affordability Period the Project may be resyndicated as provided for in 26 U.S.C §42, and conveyed to replacement Lessees subject to prior written approval of the City, which shall not be unreasonably withheld, so long as tenant income grandfathering is allowed to the extent permitted by law and subject to continued compliance with the requirements of the Lease Agreement, the Ordinances, and the Code. Lessee agrees not to convey its interest in the Project until after expiration of the initial LIHTC compliance period (15 years) unless otherwise approved by resolution of the City Council.

10. ADDRESSES FOR NOTICES HEREUNDER.

IF TO THE CITY:

City Manager
City of Naperville
400 South Eagle Street
Naperville, Illinois 60540
Email: kriegerd@naperville.il.us

WITH COPIES TO:

City Attorney, City of Naperville
400 South Eagle Street
Naperville, Illinois 60540
Email: disantom@naperville.il.us

IF TO THE LESSEE:

Brian Swanton, CEO Gorman & Company, LLC
200 North Main Street
Oregon, WI 53575
Email: bswanton@gormanusa.com

WITH COPIES TO:

William Cummings, Esq.

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
Office: 414-298-8330
Email: wcummings@reinhartlaw.com

/SIGNATURES ON FOLLOWING PAGES/

LESSEE/ Gorman & Company, LLC

[Signature]

[Printed name]

[Title]

State of Illinois)
) ss
County of DuPage)

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

Notary Public

Print Name

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

-Seal-

Notary Public
My Commission Expires: _____

CITY OF NAPERVILLE/LESSOR

By: _____
Douglas A. Krieger
City Manager

ATTEST:

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

Date: _____



103RD ST

QUICK
FIRE DR

ALICE LN

TOWER CT

ROUTE 59

ENGLISH
ROWS AV

SUBJECT
PROPERTY
Approx. 6.1 Acres



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