

**DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF AURORA, VISIONARY VENTURES NFP CORPORATION AND  
WEST AURORA SCHOOL DISTRICT 129 RELATING TO THE  
TODD SCHOOL (100 OAK AVENUE) AND THE LINCOLN SCHOOL (631 SOUTH  
LAKE STREET) DEVELOPMENT PROJECT – HOME-2021-02**

This **DEVELOPMENT AGREEMENT BETWEEN THE CITY OF AURORA, VISIONARY VENTURES NFP CORPORATION AND WEST AURORA SCHOOL DISTRICT 129 RELATING TO THE TODD SCHOOL (100 OAK AVENUE) AND THE LINCOLN SCHOOL (631 SOUTH LAKE STREET) DEVELOPMENT PROJECT HOME-2021-02** ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date"), by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation ("City"), Visionary Ventures NFP Corporation, an Illinois not-for-profit corporation ("Developer") and West Aurora School District 129, an Illinois public school district ("District"). The City, Developer and the District are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

**R E C I T A L S**

**WHEREAS**, the City has a population of more than twenty-five thousand (25,000) persons and is, therefore, a home rule unit under Section 6(a) of Article VII of the Illinois Constitution of 1970; and

**WHEREAS**, subject to the limitations set forth in Section 6 of Article VII of the Illinois Constitution of 1970, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

**WHEREAS**, the City has the authority to make all contracts and do all other acts in relation to the property and concerns of the City; and

**WHEREAS**, the United States government has appropriated funds to create affordable housing for low-income households under the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, enacted November 28, 1990), as amended ("HOME"), to be administered through the United States Department of Housing and Urban Development ("HUD"); and

**WHEREAS**, the City applied to HUD for said HOME funds to be used for the creation of affordable housing for low-income households within the City; and

**WHEREAS**, HUD then granted to the City certain HOME funds, Catalog of Federal Domestic Assistance Number (CFDA)14.239, Grant Numbers M-16-MC-17-0221, and M-17-MC-17-0221, M-18-MC-17-0221, M-19-MC-17-0221, M-20-MC-17-0221 and M-21-MC-17-0221 which the City has committed to use to further the availability of affordable rental housing for low-income households within the City; and

**WHEREAS**, the District transferred all rights, title and interest in two (2) properties known as the Todd School (100 Oak Avenue) and the Lincoln School (631 South Lake Street) to the City pursuant to the “Intergovernmental Cooperation Agreement Between the City of Aurora, Illinois And West Aurora School District 129, Kane County, Illinois” (“IGA”) which was approved and authorized by the City on December 22, 2020 in Resolution 20-326, a copy of the IGA is attached hereto and made a part hereof as **Exhibit A**, which the City and the District amended in the “CDBG Agreement,” as defined in Section II.A.6. below, in recognition of the public good of the Project and the companion healthcare facility being undertaken by the Developer under the CDBG Agreement; and

**WHEREAS**, the IGA requires that the District be made a party to this Agreement and creates certain obligations and rights of the Parties with respect to the properties subject to this Agreement; and

**WHEREAS**, the City desires to further the purposes of HOME by facilitating the acquisition, development, and rehabilitation of the two (2) former District properties into affordable rental housing for low income residents in accordance with the terms of this Agreement (“Project,” as further defined in Section II.A.3. below), by loaning certain HOME funds to Developer to assist in the residential acquisition and development of a mix of studio, one (1), two (2), and three (3) bedroom units at the Project’s real property locations commonly known as 100 Oak Avenue (individually, the “Todd School”) and 631 South Lake Street, Aurora, Illinois 60506 (individually, the “Lincoln School”), together the Todd School and the Lincoln School are the “Property,” as legally described and depicted in **Exhibit B** (“Project Area”) attached hereto and made a part hereof; and

**WHEREAS**, the City has previously approved various zoning and other approvals relating to the Project and Project Area, including a Conditional Use Planned Development pursuant to Ordinances 021-059 and 021-060 and Final Plan for the Property pursuant to Resolutions R21-293 and R21-295. Ordinance 021-059, Ordinance 021-060, Resolution R21-293 and Resolution R21-295 along with all attachments and exhibits thereto are incorporated by reference into this Agreement.

**WITNESSETH:**

**IN CONSIDERATION** of the Recitals, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

**I. INCORPORATION AND CONSTRUCTION.**

- A. **Recitals.** All recitals set forth above are incorporated herein and made part hereof, the same constituting the factual basis for this Agreement.
- B. **Headings.** The section headings of the Sections and Subsections of this Agreement are for convenience of reference only and shall not be deemed to

constitute part of this Agreement or to affect the construction hereof.

C. **Construction.** This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

1. Definitions include both singular and plural.
2. Pronouns include both singular and plural and cover all genders.
3. The word "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."
4. Headings of articles and sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
5. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the terms of this Agreement shall control.
6. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
7. The City's Mayor, Chief Community Services Officer, or Community Development Manager, or their designee's, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. Developer is entitled to rely on the full power and authority of the persons executing this Agreement on behalf of the City as having been properly and legally given by the City.
8. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates each of Shelly Tucciarelli, Michael Poulakidas and John Cordogan as its authorized representatives who shall individually have the power and

authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection (such individual being an "Authorized Developer Representative"). Developer shall have the right to change its Authorized Developer Representative by providing the City with written notice of such change, which notice shall be sent in accordance with Subsection IX.H. below.

D. **Exhibits.** The following exhibits are attached hereto and made a part hereof:

**Exhibit A** – IGA;

**Exhibit B** – Project Area and Legal Description;

**Exhibit C** – Property Standards;

**Exhibit D** – Note;

**Exhibit E** – Mortgage;

**Exhibit F** – Regulatory and Land Use Restriction Agreement;

**Exhibit G** – Equal Employment Certification;

**Exhibit H** – Environmental Authority to Use Grant Funds (AUGF);

**Exhibit I** – Priority Interests;

**Exhibit J** – Drug Free Workplace Certification;

**Exhibit K** – City's Affirmative Marketing Policy;

**Exhibit L** – Rehabilitation Plan;

**Exhibit M** – Tenant Selection Plan;

**Exhibit N** – 2021 Aurora Housing Authority Utility Allowance; and

**Exhibit O** – Real Estate Sale Contract.

## **II. DEVELOPER'S OBLIGATIONS AND COMMITMENTS.**

### **A. Developer's Obligations.**

Developer shall have the obligations and commitments set forth in this Section II.A., in addition to all other obligations set forth elsewhere in this Agreement, for the development, acquisition, construction, financing, operation, completion and furtherance of the Project:

1. **Proof of Financing.** As required by the applicable provisions of 2 C.F.R. § 200, *et seq.* and 24 C.F.R. § 92.504(c)(2), Developer, as of the Effective Date, to the City's satisfaction, has submitted proof of adequate financial and economic resources available to implement and complete Developer's obligations set forth in this Agreement.

2. **Acquisition/Rehabilitation/Construction of the Property.**

Developer shall:

- a. Acquire and rehabilitate and construct (either directly or through an affiliated special purpose entity) the Project on the Property, all in accordance with this Agreement, on or before thirty (30) months after the Effective Date.
  - b. Within thirty (30) days after the Effective Date (“Rehabilitation Plan Deadline”), submit any revisions to the Rehabilitation Plan for the Property (“Rehabilitation Plan”) to the City, including any modifications to the complete scope of work for the rehabilitation and construction of the Project on the Property as set forth in **Exhibit L**. The Rehabilitation Plan and the rehabilitation and construction of the Project on the Property shall meet or exceed the property standards, building code standards and the energy efficiency standards set forth in **Exhibit C**. The City shall review the Rehabilitation Plan and any modifications submitted by Developer and provide a response as set forth in Subsection III.B.1. Subsequent to the Rehabilitation Plan Deadline and prior to the financial closing of the Project, the Developer may also submit additional revisions or modifications to the scope of work for the City’s review and the City shall provide a response as set forth in Subsection III.B.1.
3. **Statement of Work.** Developer hereby agrees to perform activities described in this section in accordance with the time periods specified in Section II.A.5. hereof: Developer shall utilize HOME funds solely for eligible costs associated with the residential portion of the development of the Property.. The Project will contain approximately \_\_ (\_\_) studio units (approximately \_\_\_\_\_ (\_\_\_\_) square feet each) in the Todd School, \_\_ (\_\_) studio units (approximately \_\_\_\_\_ (\_\_\_\_) square feet each) in the Lincoln School, \_\_\_\_ (\_\_) one (1) bedroom units (approximately \_\_\_\_\_ (\_\_\_\_) square feet each) in the Todd School, \_\_\_\_ (\_\_) one (1) bedroom units (approximately \_\_\_\_\_ (\_\_\_\_) square feet each) in the Lincoln School, \_\_\_\_ (\_\_) two (2) bedroom units (approximately \_\_\_\_\_ (\_\_\_\_) square feet each) in the Todd School, \_\_\_\_ (\_\_) two (2) bedroom units (approximately \_\_\_\_\_ (\_\_\_\_) square feet each) in the Lincoln School, \_\_ (\_\_) three (3) bedroom unit (approximately \_\_\_\_\_ (\_\_\_\_) square feet each) in the Todd School and \_\_ (\_\_) three (3) bedroom unit (approximately \_\_\_\_\_ (\_\_\_\_) square feet each) in the Lincoln School.

Number of Bedrooms	Total Project Units	High HOME Units (<60% MFI)	Low HOME Units (<30%MFI)
Studio	5	1	1
1-bedroom	9	2	1
2-bedroom	9	2	1
3-bedroom	24	5	1
	47 Total Units	10 High HOME Units	4 Low HOME Units

**Statement of Work Specifics:** The Project building sites are located at the Property, at 100 Oak Avenue and 631 South Lake Street, Aurora, Illinois 60506, currently and under contract to Developer and legally described in **Exhibit B**. All Project units must meet the property standards set forth in the City of Aurora's Property Standards Policy in **Exhibit C**. Fourteen (14) Project units shall be FIXED HOME Units ("HOME Program Units"). Developer shall include in its marketing plan (Exhibit K) and tenant selection plan (Exhibit M) a robust marketing plan that focuses on recruiting current City residents to occupy the HOME Program Units. Developer shall work with the City to create a marketing plan focusing on City residents. Both the marketing plan (Exhibit K) and tenant selection plan (Exhibit M) shall be approved by the City. The HOME Program Units shall comply with the current maximum allowable rents for projects funded by the HOME Program established by HUD and in as amended from time to time (set forth below).

Rents in effect, as of June 1, 2021 are: Studio High HOME Rent of \$1,012, One-bedroom High HOME Rent of \$1,117, two-bedroom High HOME Rent of \$1,299 and three-bedroom High HOME Rent of \$1,542.

Maximum allowable rents including utilities in effect, as of June 1,, 2021 are:

HOME Unit Designation	Studio Unit	1-Bedroom Unit	2-Bedroom Unit	3-Bedroom Unit
Low HOME Rent	\$816	\$874	\$1,048	\$1,352
High HOME Rent	\$1,012	\$1,117	\$1,299	\$1,542

For utilities not included in the rent, said maximum High HOME Rent shall be reduced by an amount equal to the applicable utility allowances in effect for the Aurora Housing Authority as shown in **Exhibit N** or other utility schedule using a HUD approved methodology. In the event that HUD publishes a new Maximum Allowable Rents Schedule for High and Low HOME Rents after the date of this Agreement, Developer is directed to comply with the new rent limits. Developer will also submit a rent and occupancy report to the City each year to demonstrate compliance with the HOME rent requirements. If such report demonstrates non-compliance with the HOME rent requirements, City may approve or disapprove within the HUD allowed limits, in which case Developer will make requested adjustments. City's approval of the rent and occupancy report will constitute approval for any rent increase contained in the report. Any increase in rents for HOME Program Units is subject to the provisions of the current lease for each unit, and, in any event, Developer must provide tenants of those units not less than thirty (30) days prior written notice before implementing an increase in rent. Notwithstanding the foregoing,

no High HOME Program Unit may be occupied by a family whose income, at the time of initial occupancy, exceeds sixty percent (60%) of the median family income for the area. Additionally, no Low HOME Program Unit may be occupied by a family whose income, at the time of initial occupancy, exceeds thirty percent (30%) of the median family income for the area. The "Part 5" definition of annual income will be used in this Project, and is defined as the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period. 24 CFR Part 5, *et seq.* A list of the "Part 5" income "inclusions" and "exclusions" is published in the Code of Federal Regulations at 24 CFR 5.609. This list is periodically updated by HUD when changes are made to the "Part 5" definition of annual income by the United States Congress.

In accordance with 24 CFR 92.252, the HOME Program Units will be designated as affordable to such households for a period of thirty (30) years from the closeout date in the Integrated Disbursement and Information System (IDIS). The Project funding divided by the number of HOME assisted units results in a per unit subsidy is greater than \$40,000; therefore, the affordability period will consist of a twenty (20) year HOME Program required affordability period followed by a second ten (10) year City-required extended use period through the recording of deed restrictions, covenants running with the land, or other mechanisms approved by HUD as described in the "Regulatory Agreement" to be entered into by and between City and Developer, to be executed in connection with undertaking the Project.

The Project shall also consist of the allocation of approximately three thousand five hundred (3,500) square feet for a public healthcare facility or another social service agency, charitable organization, health related facility or similar use not operated for pecuniary profit (as approved by City Ordinance O21-060) ("Healthcare Facility"), which shall be conveyed and assigned by the owner of the Project, and assumed by the District upon completion of the Healthcare Facility.

4. **Eligible Costs.** Developer agrees to administer the Project in accordance with the HOME regulations at 24 CFR Part 92 and other applicable Federal, State, and local laws, ordinances and regulations. Developer shall require such compliance and assurances in all lower tier contracts and subcontracts financed in whole or in part with the HOME funds. Developer shall perform all acts with responsibility to City in the same manner as City is required to perform all acts with responsibility to the Federal government. The scope of activities to be performed, pursuant to this Agreement, will be governed by, and limited to, the following:
  - a. Developer may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The

amount of each request must be limited to eligible costs as determined by the City.

b. The City shall provide HOME funds to Developer to reimburse Developer for (or pay directly for or through a construction escrow account) eligible costs that the City determines to be customary and reasonably associated with the Project, as follows:

- i. Costs of acquisition, including purchase price and all usual and customary closing costs. The cost reasonableness of the purchase price shall be documented. The City will not fund a purchase price above appraised value.
- ii. Costs of construction, including supplies, materials, and hiring contractors, subcontractors, and trades necessary to complete the work. All work for which a licensure or certification program exists locally or in the State of Illinois must be carried out by properly licensed or certified persons.
- iii. Usual and customary operating costs incurred during the period of Project rent-up.
- iv. Other such related costs that have the same intent as this Agreement, are eligible for HOME funding, and are pre-approved by City staff.

c. **Completion of Rehabilitation.** Developer shall complete rehabilitation of the Property in accordance with the Rehabilitation Plan, and receive a satisfactory inspection or approval for any permitted work from the City for the Property, on or before thirty (30) months from the Effective Date.

5. **Timing of Obligations.** Within five (5) calendar days of receipt of a Notice to Proceed (as defined in Subsection III.B.1 below) for the Project, Developer shall complete the tasks below, and be responsible for meeting the completion dates for the activities listed below. If Developer does not meet a completion date, Developer shall immediately submit a revised implementation schedule for approval by the City. Failure to achieve these deadlines may result in the loss or reduction of grant funds.

a. Execute and deliver to the City a mortgage in the form attached as **Exhibit E** ("Mortgage") in the amount of the "Project Commitment," as defined below, with such changes thereto as approved by the City to conform the Mortgage to the terms of this Agreement, which shall be in effect for the "Affordability Period," as defined below.

b. Execute and deliver to the City the note in the form attached as **Exhibit D** ("Note") in the amount of the Project Commitment, with such changes thereto as approved and/or required by the City to conform the Note to the terms of this Agreement, which shall be in effect for the Affordability Period.

c. Execute a regulatory agreement in the form attached as **Exhibit F** ("Regulatory Agreement"), with such changes thereto as approved by the City to conform the Regulatory Agreement to the terms of this Agreement, which shall be in effect for the Affordability Period.

d. Simultaneous with taking title to the Property, record against title to the Property, with the Kane County Recorder's office at Developer's cost, the executed Regulatory Agreement and Mortgage, such that the Regulatory Agreement and Mortgage are given the priority set forth in Subsection III.D. below.

e. Within twelve (12) months of completing rehabilitation of the Property, as evidenced by receiving a satisfactory inspection for any permitted work, have all dwelling units in the Property inhabited by eligible tenants, as eligibility is set forth in Section 3(a) of the executed and recorded Regulatory Agreement for the Property.

Activity		Completion Target Date
1	Project Closing	May 31, 2022
2	Rehabilitation Start	May 31, 2022
3	Rehabilitation at 50% Completion	February 28, 2023
4	50% of HOME funds drawn	February 28, 2023
5	Rehabilitation at 100% Completion	November 30, 2023
6	100% of HOME funds drawn	November 30, 2023
7	Lease Up / Legal Documents Complete	May 31, 2024
8	Project Complete	May 31, 2024

f. Developer shall complete expenditure of HOME Funds pursuant to the Project by November 30, 2023. If Developer is delayed in the completion of the Project by any cause legitimately beyond its control, as determined by the City, such that it cannot complete the Project when required by this Agreement, Developer shall immediately give written notice to the Community Development Manager ("Manager") and to the City of the anticipated delay, the reasons for delay, and request an extension of time for completion of the Project. Upon review and approval of the Community Development Manager, the time for completion may be extended by the Community Development Manager for a maximum of twelve (12) months.

g. After a period of twenty-four (24) months from the date of this Agreement, the Community Development Manager may review the

progress of the Project. At the time of this review, if Developer has not demonstrated significant progress toward completion and, if Developer has not made substantial effort toward completion and delays are determined by City to be within the control of Developer; the Community Development Manager shall recommend to the City that this Agreement be terminated, and all further payments suspended, and the City shall act upon said recommendation and notify Developer of its action.

h. This Agreement shall remain in full force and effect for thirty (30) years from the closeout date in the Integrated Disbursement and Information System (IDIS) ("Affordability Period"). The Affordability Period will consist of a twenty (20) year HOME Program required Affordability Period followed by a second ten (10) year City-required extended use period through the recording of deed restrictions, covenants running with the land, or other mechanisms approved by HUD as described in the Regulatory Agreement.

i. Developer shall remain involved in the Project for the entirety of the Affordability Period. After the Fifteenth (15<sup>th</sup>) year following the completion date listed in the IDIS System, Developer shall have the option to sell the Property to the City for the purchase price of One and 00/100 Dollar (\$1.00). If the City declines to purchase the Property, any sale to a third-party must be approved by the City. Following the expiration of the Affordability Period, this provision shall expire and any sale or transfer of the Property to the City shall be governed by Section III.D of this Agreement. If the Property is transferred to the City during the Affordability Period, the second ten (10) year City-required extended use period shall no longer apply.

6. **Payment Requirements.** When submitting a payment request ("Payment Request") for eligible rehabilitation, construction, and carrying costs which Developer has incurred, all such Payment Requests shall include (if not already submitted): (1) the most current City-approved Rehabilitation Plan, (2) building permits issued by the City, (3) evidence of an agreement which commits Developer to an amount of at least equal to the Rehabilitation Funds for purposes of rehabilitation of the Property, (4) paid receipts, lien waivers and/or unpaid invoices for rehabilitation/construction costs submitted for the Property, (5) such additional information and documents as reasonably requested by the City, and (6) the following certifications:

a. For interim payments to contractors and subcontractors, certification that the work for which payment is requested has been performed and is in place and to the best of Developer's knowledge, information and belief, the quality of such work is in accordance with the subcontract and all applicable City Codes, a copy of all applicable

contractor waivers, and subject to: (a) any evaluation of such work as a functioning project upon substantial completion, (b) the results of any subsequent tests permitted by the subcontract, and (c) any defects or deficiencies not readily apparent upon inspection of the work; and

b. For final payment on the rehabilitation of the Property and all dwelling units therein, all of the above noted certifications, as well as a certification that all other applicable laws and regulations have been met or exceeded.

c. A statement by Developer, under oath, that it is entitled to the amounts requested in the Payment Request.

The City shall thereafter review and process the Payment Request as set forth in this Subsection II.A.6. The City's obligation to pay the Developer under this Agreement is conditioned on, in addition to the other conditions precedent herein, the Developer being in compliance with its obligations in this Agreement. If the City elects to withhold or deny payment to Developer, the City shall advise the Developer in writing as to the specific basis for the City's position.

The City shall not proceed with the disbursement of any Project Commitments to Developer unless Developer is in full compliance with this Agreement, the "Community Development Block Grant Agreement Project Number CDBG-2021-12 Between the City of Aurora, Illinois, Visionary Ventures NFP Corporation and West Aurora School District 129 for Todd School (100 Oak Avenue) Development Project" ("CDBG Agreement"), the City of Aurora Municipal Code, and the HUD Uniform Physical Conditions Standards (UPCS) in 24 C.F.R. § 92.251.

The City shall not proceed with disbursement of any Project Commitments to Developer unless Developer is proceeding under the CDBG Agreement with construction and development of the "Project," as defined in the CDBG Agreement.

The City shall not proceed with disbursement of any Project Commitments to Developer unless a lease, license, operating agreement or other agreement has been obtained for the operation of the Healthcare Facility.

The City shall not proceed with the disbursement of any Project Commitments to Developer until Developer provides the City with acceptable written evidence of funding for the entire Project, in a format requested by the City.

7. **Repayment.** In the event that the City is required to repay HOME funds as a result of the Project's failure to comply with any HUD or other federal

regulation or law, Developer shall repay the City the amount of the "Project Commitment" (as defined in Subsection III.A.) paid by the City to Developer pursuant to this Agreement ("Paid Commitment") as follows:

a. Should the Fourteen (14) HOME units not be occupied within twelve (12) months from the completion of the rehabilitation phase of the Project, a marketing plan, at Developer's cost, shall be submitted to the City.

b. Should the Fourteen (14) HOME units never have been leased within eighteen (18) months from the completion of the rehabilitation phase of the Project, immediate repayment of the Paid Commitment by Developer to the City shall be made.

**8. Further Assistance and Corrective Instruments.**

a. Developer shall timely provide the City with such additional documentation and/or information which the City determines, in its sole discretion, is necessary to determine whether Developer is in compliance with this Agreement, and whether a Payment Request should be granted or denied.

b. Developer shall, upon request from the City, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement.

**9. Meetings.** Developer shall meet with the Corporate Authorities of the City, and City staff, and make presentations to the Corporate Authorities of the City and City staff as reasonably requested by the City, in order to keep the City apprised of Developer's progress on the Project.

**10. Limitations on Reimbursement.**

a. Developer shall be solely responsible for the costs of rehabilitation and construction of the Project on the Property above the Paid Commitment. Developer shall be solely responsible for the costs of rehabilitation and operation of the Project Property.

b. The Paid Commitment shall not exceed the Project Commitment.

**11. Local Employment Preference.** Developer shall make reasonable efforts to utilize the services of local consultants, contractors, and vendors to rehabilitate, construct and operate the Property. The local employment

preference however will not supersede the bidding and procurement requirements set forth in 2 CFR Part 200.

12. **Continuity of Corporation.** Developer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as a nonprofit in good standing in the State of Illinois during the term of this Agreement, and so long as Developer has any other remaining obligation pursuant to the terms of this Agreement.
13. **Insurance.** For the purpose of this paragraph, the term subcontractor includes the general contractor engaged by Developer to construct the Project, and the insurance requirements may be met by Developer or its subcontractor. Developer shall maintain at all times the following insurance coverages on the Project, and the Property, which insurance shall be placed with insurers with an A.M. Best's rating of no less than A-: VI. Developer shall not commence work under the Agreement until it has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the insurance company, written or countersigned by an authorized Illinois State agency, shall be filed with the City for review and approval. Developer shall require that any and all subcontractors, which are not protected under Developer's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of Developer. Developer shall not allow any subcontractor to commence work on a subcontract until all insurance required for the subcontractor has been obtained and approved by the City. If so requested, Developer shall also submit copies of insurance policies for inspection and approval of the City before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days' notice in advance to the City and consented to by the City in writing and the policies shall so provide.
  - a. For fire and casualty insurance, coverages in an amount no less than the estimated fair market value of the Rehabilitated Property upon completion of the Project, and with sufficient business interruption coverage.
  - b. For liability insurance, coverages in amounts per incident of not less than One Million and No/100 Dollars (\$1,000,000.00) for injury to one (1) person, Two Million and No/100 Dollars (\$2,000,000.00) for injury to more than one (1) person, One Million and No/100 Dollars (\$1,000,000.00) for property damage, and a Five Million and No/100 Dollars (\$5,000,000.00) umbrella policy, and with sufficient business interruption coverage.

The City, and its elected officials, officers, agents, and employees (together the "Additional Insureds") shall be additional insureds on all

policies set forth in this Subsection II.A.13. All insurance of any tier shall state that the coverage afforded to the Additional Insureds shall be primary noncontributory insurance of the Additional Insureds with respect to any claims arising out of the Project.

14. **Equal Opportunity Employment.** Developer shall comply with all equal opportunity laws. Simultaneous with execution of this Agreement, Developer shall execute Exhibit G hereto, and shall comply with the conditions set forth on Exhibit G. Developer shall further, should Developer find it necessary to hire additional employees to carry out the Project, comply with the provisions of 42 U.S.C. § 3535 and 24 C.F.R. §§ 135.1-135.92, by making efforts to offer training and employment opportunities to low and very low income residents of the Project area.
15. **Rehabilitation and Maintenance of Property.** Developer shall rehabilitate the Property, and at all times maintain and operate the Property to a high-quality, upscale, decent, safe, and sanitary standard, and in conformance with this Agreement, the City of Aurora Municipal Code, the HUD Uniform Physical Conditions Standards (UPCS) in 24 C.F.R. §92.251 Property standards in accordance with 24 CFR 5.703, and the Property Guidelines in Exhibit C. Developer shall professionally maintain and manage the Project and Property in accordance with the standard for similarly sized market-rate properties in the greater Aurora region. Developer shall maintain the Project and Property pursuant to the terms and conditions contained in any and all permits issued to Developer by the City for the Project or Property.
16. **Compliance.** Developer shall at all times acquire, construct, operate and maintain the Project in substantial conformance with all applicable Federal, State, and City laws, rules, ordinances and regulations, including but not limited to the HOME, Federal Register Notice, Vol. 73, No. 194, 24 C.F.R. Part 570. All work with respect to the Project shall conform to all applicable Federal, State, and City laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the City, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement. Developer shall require such compliance and assurances in all lower tier contracts and subcontracts associated with this Agreement. Developer shall perform all acts with responsibility to the City in the same manner as City is required to perform all acts with responsibility to the Federal government.

17. **Administrative Standards.** Developer shall comply with applicable portions the applicable provisions of 2 C.F.R. 200, *et seq.*, except Developer may name members of its own development team to work on the Project.
18. **Additional Standards.** Although acting as a developer, Developer shall comply with the requirements and standards of 2 C.F.R. 200 Part 230 to the extent they apply to Developer. This requirement establishes principles for determining allowable costs. Although acting as a developer, Developer must comply with the audit requirements of 2 C.F.R. 200 subpart F. For any year that Developer expends more than Seven Hundred and Fifty Thousand and No/100 Dollars (\$750,000.00) in Federal funds, Developer must undergo a single audit which includes its financial statements and its federal awards from all applicable federal programs.
19. **Representations and Warranties of Developer.** Developer represents, warrants and agrees to the following as the basis for the undertakings on its part herein contained, as of the date hereof and until completion of the Project:
  - a. Developer is a not-for-profit corporation, duly organized and existing under the laws of the State of Illinois, qualified to do business in the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To the best of Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the Project.
  - b. Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of, or compliance with, the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer any related party or any of its partners or venturers is now a party or by which Developer or any of its related parties, partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any

prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party, or any of its partners or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party, any of its partners or any of its venturers is bound.

c. Developer covenants that no officer, member, manager, stockholder, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the City, or any other person connected with the City, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the City.

d. Concurrently with execution of this Agreement, Developer shall disclose to the City the names, addresses and ownership interests of all persons that comprise Developer.

e. Developer has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.

f. Developer is not delinquent in payment of any taxes to the Illinois Department of Revenue.

20. **Historic Artwork.** All historically significant artwork, including murals and statues on the Property (collectively the "Artwork") shall be preserved by the City, at its cost, pursuant to the IGA and the "Memorandum of Understanding" passed by Resolution R19-206 on June 25, 2019. The Artwork shall be removed from the Property to allow for future placement in a location of public display. As set forth below, the City shall remove the Artwork prior to the initiation of the Project by the Developer and is therefore not part of the work being proposed by the Developer for Part 2 of the Historic Preservation Tax Credits. Developer agrees to allow the City to remove said Artwork and shall in good faith work with the City on a reasonable timeframe for such removal. The City shall remove all Artwork using a professional with knowledge of art removal in a manner that will not damage the Artwork. The City shall store the removed Artwork in a manner that will not damage the Artwork. The City will work on implementing a conservation plan including restoration and public display, to the extent feasible. The City shall remove the Artwork at a time and in a manner that does not interfere with the Developer's construction of the Project, provided that the Artwork shall be removed by March 31, 2022.

### **III. CITY'S OBLIGATIONS, COMMITMENTS AND BUDGET.**

The City shall have the obligations and commitments set forth below, in addition to those set forth elsewhere in this Agreement regarding the Project:

**A. Financing.** The City shall, within thirty (30) business days of the Effective Date, and so long as Developer is in compliance with each and every term of this Agreement, set aside and commit the following funds for the Project, subject to the terms of this Agreement (together the “HOME Commitments”):

1. One Hundred Seventy Thousand Eight Hundred Six and 24/100 Dollars (\$170,806.24) of 2016 HOME funds, CFDA 14.239, Grant No. M-16-MC-17-0221 received by the City; and
2. Four Hundred Forty One Thousand Six Hundred and Forty One and 30/100 (\$441,641.30) of 2017 HOME funds, CFDA 14.239, Grant No. M-17-MC-17-0221 received by the City; and
3. Six Hundred Thirty Seven Thousand Nine Hundred and Seventy and 05/100 Dollars (\$637,970.05) of 2018 HOME funds, CFDA 14.239, Grant No. M-18-MC-17-0221 received by the City;
4. Five Hundred Eighty Four Thousand Eight Hundred and Seventeen and 00/100 Dollars (\$584,817.00) of 2019 HOME funds, CFDA 14.239, Grant No. M-19-MC-17-0221; and
5. Six Hundred Three Thousand Nine Hundred Sixty Six and 77/100 Dollars (\$603,966.77) of 2020 HOME funds, CFDA 14.239, Grant No. M-20-MC-17-0221; and
6. Four Hundred Sixty Thousand Seven Hundred and Ninety Eight and 64/100 Dollars (\$460,798.64) of 2021 HOME funds, CFDA 14.239, Grant No. M-21-MC-17-0221
7. Together, the HOME Commitments total Two Million Nine Hundred Thousand and 00/100 Dollars (\$2,900,000.00) and are the “Project Commitment.” All sources of funds for the Project are anticipated to be approximately:

City of Aurora HOME Program	\$2,900,000.00
Community Block Grant Funds	\$600,000.00
Senior Construction/Perm Mortgage Loan	\$2,100,000
IHDA Loan	\$2,335,000
Low Income Housing Tax Credit Equity	\$13,198,000
Historic Tax Credit Equity	\$5,441,000
Deferred Developer Fee	\$309,000
Illinois Donation Tax Credit Equity	\$686,700

ComEd Grant	\$180,768
Total Estimated Budget	\$27,750,468

8. Developer understands and acknowledges that the Project Commitment is to be received by the City from HUD, to be used by Developer for the acquisition and rehabilitation of low-income rental housing; that the funds are administered by the City, and that the City's obligation to provide any of the Project Commitment to Developer is dependent upon the availability of said Project Commitments relative to this transaction. Accordingly, it is agreed that the City's obligations to provide funds for the Project are a limited obligation of the City expressly conditioned upon the availability of the Project Commitments and Developer's receipt of any and all approvals required from City for the disbursement of said funds relative to this transaction by the deadlines set forth in this Agreement, and that the City does not pledge or promise any general funds or any of its full faith and credit.

## **B. Rehabilitation of Properties.**

1. The City shall, within thirty (30) business days of receipt of a Rehabilitation Plan for the Property:
  - a. Review the Rehabilitation Plan for the Project Property, and the attachments thereto, and determine whether the Plan for the Project Property, and the attachments thereto, meet the requirements of this Agreement. Materials and finishes should be appropriate for the room and function. For example, non-porous surfaces should be used for countertops and flooring in kitchens and baths. Materials and finishes must be durable, but not exceed a mid-range grade of quality, and may not be "luxury improvements." The City will not permit the client to pay the difference to upgrade beyond the materials and finishes allowed under this policy or use an "allowance" system for components or fixtures. The City specifically considers "luxury improvements" to include:
    - granite countertops
    - bamboo, hardwood and hardwood engineered flooring (or similar materials) that would not be considered appropriate for the room installed or considered when factoring in the potential savings of long-term maintenance and capital needs
    - cabinetry beyond builder's grade cabinets
    - tile, laminate flooring or carpet beyond a mid-range grade

When replacing components during rehabilitation, components should be replaced with like components, unless building codes, energy standards, and/or the needs of the occupants require different materials. For example, an "occupant need" may mean that allergies or disabilities dictate a solid

surface flooring such as tile or laminate be installed in lieu of carpeting. No components will be replaced strictly for cosmetic purposes. If mold remediation is performed in a basement and/or attached garage, other rehabilitation work will be performed on a “do no harm” basis. This means that damage to the basement or garage caused by performing eligible work may be repaired only. For example, if all the drywall in a basement or garage must be removed because of mold, drywall will not be replaced, unless a code standard requires drywall in a basement or garage. However, if a portion of drywall must be removed, or if a fixture in a basement or garage must be removed due to mold, and such removal leaves a wall partially damaged or a gap in a wall, floor, or ceiling due to fixture removal, the drywall or gap may be repaired (without replacement of the fixture). The “lower level” of a house that is a split level, tri-level, or raised ranch and is considered living area under property assessment standards is not considered to be a basement under this Agreement.

b. If the City finds that the Rehabilitation Plan for the Project Property, and the attachments thereto, meet the requirements of this Agreement, the City shall:

- i. Initiate the environmental review process (“Environmental Review Process”) set forth in **Exhibit H** attached hereto and made a part hereof, and those additional environmental reviews which the City deems necessary. Per the regulations of 24 CFR Part 58, The City of Aurora completed a HUD required Environmental Assessment and identified the following Mitigation Measure or Conditions and Mitigation Plan:

“Lead based paint hazards and lead based paint to be disturbed as part of rehab activities will be abated using safe work practices by certified personnel. Interim clearance will be conducted after demolition activities and prior to work commencing. Identified Asbestos Containing Materials (ACM) and any suspected ACM uncovered during demolition and reconstruction activities that testing determines is ACM, will be mitigated and safely removed and disposed of in accordance with local, state, and federal regulations. Any presence of mold discovered will be mitigated and safely removed and disposed of in accordance with local, state, and federal regulations. Finally, upon the completion of the project, but before the lease up of units, radon testing will be completed to confirm the pCi/L amount is below the acceptable amount of 4pCi/L. The Developer will be responsible for all costs associated with additional testing, remediation, and required abatement.”

- ii. If the City obtains clearance for the Proposed Property after completion of the Environmental Review Process, issue a written notice to proceed ("Notice to Proceed").
- c. If the Rehabilitation Plan for the Proposed Property, or the attachments thereto, do not meet the requirements of this Agreement for any reason, including, but not limited to, failure of the City to obtain clearance for the Property after the Environmental Review Process, notify Developer in writing of the deficiencies in the Rehabilitation Plan for the Property, the attachments thereto, or the Environmental Review Process, and permit Developer to submit one (1) amended Rehabilitation Plan for the Property that meets the requirements of this Agreement within an additional ten (10) business days of the City giving notice of the deficiencies.

If a Notice to Proceed is issued by the City, Developer shall thereafter review, prepare and submit a Payment Request as set forth below.

- 2. The City shall, within seven (7) business days of receipt of a Payment Request:
  - a. Review the Payment Request, and the attachments thereto, and determine whether it meets the requirements of this Agreement.
  - b. The City's review shall include a review of the requested disbursement amount, which shall not exceed a proportional amount of Developer's Project budget expended as of the date a Payment Request is made ("Disbursement Amount"), a review of the amount of the Paid Commitment, and a determination of whether there are adequate funds remaining in the Project Commitment to pay the requested Disbursement Amount. For example, if Developer has expended ten percent (10%) of its Project budget as of the date of a payment request, the maximum amount of the Project Commitment to be paid for that request would be ten percent (10%) of the Project Commitment, which is Two Hundred Ninety Thousand and No/100 Dollars (\$290,000.00). A Payment Request with a Disbursement Amount greater than the funds remaining in the Project Commitment does not meet the requirements of this Agreement.
  - c. If the Payment Request, and the attachments thereto, meet the requirements of this Agreement, the City shall deposit the Disbursement Amount into the construction escrow established at a title company for the Project, and issue Developer a written confirmation of disbursement ("Payment Confirmation"). The date a payment is made pursuant to this Subsection is the "Payment Date." The Project Commitment payment by the City of Project Funds shall be a loan to Developer subject to the

repayment obligations of Developer in this Agreement. The Project Commitment loan by the City to Developer shall be forgiven at the end of the Affordability Period, so long as Developer is in compliance with its obligations in this Agreement through the Affordability Period.

d. If the Payment Request, or the attachments thereto, do not meet the requirements of this Agreement for any reason, notify Developer in writing of the deficiencies in the Payment Request, or the attachments thereto, and permit Developer to submit one (1) amended Payment Plan (for each request) for the Property that meets the requirements of this Agreement within an additional ten (10) calendar days of the City giving notice of the deficiencies.

e. If the Project comes in under budget, meaning the construction costs at construction completion are less than the construction costs set forth in the Construction Contract, the City may retain the portion of the Project Commitment not paid to Developer.

**C. Payments to Developer.** The City's obligation to pay Developer from the Project Commitment is subject to the following conditions, in addition to those set forth elsewhere in this Agreement:

1. The City's obligation to pay Developer the Project Commitment is limited to the extent required by Federal, State, and City law, ordinance, and/or regulation.
2. The City's obligation to pay Developer the Project Commitment is limited to the availability of HOME funds held by the City.
3. The City's obligation to pay Developer the Project Commitment is conditioned on the compliance by Developer with the terms of this Agreement at the time Developer submits a Rehabilitation Plan for the Property through the Payment Date.

**D. Subordination and Right of First Refusal.**

1. Subordination. This Agreement and the Note, Mortgage and Regulatory Agreement executed and recorded pursuant to this Agreement shall be subordinated to those interests set forth on **Exhibit I** attached hereto. The City may not unreasonably withhold its consent to execute such other and further instruments and assurances subordinating this Agreement, the Note, Mortgage and Regulatory Agreement executed and recorded pursuant to this Agreement upon the request of Developer in the event Developer refinances its debt relative to the Project, or in the event Developer obtains additional debt financing after the Effective Date relative to the Project. Developer shall notify the City in writing if

Developer seeks to refinance its debt relative to the Project, within ten (10) calendar days of Developer submitting an application to refinance its debt relative to the Project.

2. Right of First Refusal. Pursuant to 24 C.F.R. § 92.254 (a)(5)(i)(A) (2015), the City may, but is not required to, use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The City's right to a purchase option and right of first refusal is subject to Developer and its partners' purchase option and right of first refusal assuming that the exercising party agrees to maintain the occupancy and rental restriction for the Affordability Period.

Beginning on the thirtieth (30<sup>th</sup>) year after the completion date listed in the Integrated Disbursement and Information System (IDIS) System, in the event and only in the event that foreclosure proceedings against the Project have commenced, the City shall have a purchase option and the right of first refusal to purchase the Project Property, on the following terms:

- a. If Developer desires to sell all or part of the Project Property, Developer shall first offer the Property to the City, which shall have the right to purchase the Property pursuant to the terms of said offer. In the event that the City does not purchase the Property and Developer obtains an offer from a third party to purchase the Property for less than ninety percent (90%) of the price offered to the City, then the City shall have the right to purchase the Property for the price agreed to with said third party.
- b. If Developer desires to sell the Property and receives from a third party a good faith written purchase offer for the Project Property, Developer agrees to disclose the terms of the offer to the City, in writing, within five (5) calendar days of receipt.
- c. The City shall then have twenty (20) business days after receiving notice of the offer to elect to purchase the Property on terms identical to those offered by the third party less the principal amount of the HOME and CDBG Funds invested in the Project. Election must be made by written notice to Developer, and within thirty (30) business days thereafter, the City and Developer shall enter into a formal sale contract expressly including all terms of the original offer made to Developer, except as the parties may agree.
- d. If the City fails to give the notice as provided in Subsection III.D.2.c., Developer shall be relieved of all liability to the City with regard to its right of first refusal herein, and may dispose of the Property as Developer sees fit, in accordance with the terms of this Agreement.

e. Within thirty (30) business days of the City's exercise of the right to purchase, Developer shall obtain evidence of marketable title to the property and submit it to the City for examination. The City shall then have ten (10) business days to notify Developer of any objections to the title and Developer shall have the opportunity to remedy any defects or objections within thirty (30) business days thereafter. If, by the end of the last period, Developer cannot show satisfactory title, the City shall have the option of either: (a) continuing the transaction with any contract modifications agreed by the Parties, or (b) rescinding any contract for purchase of the Property between the Parties entered into pursuant to this Subsection.

**E. Representations and Warranties of the City.** The City represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

1. The City is a municipal corporation duly organized and validly existing under the law of the State of Illinois, is a home rule unit of government, and has all requisite corporate power and authority to enter into this Agreement.
2. The execution, delivery and the performance of this Agreement and the consummation by the City of the transactions provided for herein and the compliance with the provisions of this Agreement (i) have been duly authorized by all necessary corporate action on the part of the City, (ii) require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise, result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the City is subject.

**F. Transfer of Property.**

1. Transfer of Title. The City shall transfer title to the Property to the Developer pursuant to the "Real Estate Sale Contract" attached hereto as **Exhibit O**, and made part hereof ("Contract"), which is hereby approved by the Parties, and which shall be executed by the Parties at the same time as this Agreement, with such changes to the Contract as are needed so that it complies with the terms of this Agreement:
  - a. Purchase price: One and No/100 Dollars (\$1.00);
  - b. Earnest money deposit: none;
  - c. Warranties: as-is, where-is, with no warranties or representations of any kind whatsoever, including environmental;

- d. Deed: Quit Claim Deeds (so long as acceptable to the Title Company to issue Title Policy approved by project lenders and investors, otherwise Special Warranty Deeds); and
  - e. Closing costs: paid by Developer.
- 2. Timing of Transfer. The transfer of title to the Property from the City to the Developer is contingent on satisfaction by the Developer and the City of the following conditions precedent enumerated below in this Section (together the "Closing Conditions") being satisfied, but in no event later than September 30, 2022 ("Conveyance Deadline"), with the transfer of title to the Property to the Developer occurring within thirty-one (31) days after the Conveyance Deadline:
  - a. Developer has secured all approvals necessary to construct the Project.
  - b. Developer has secured funding to construct the Project.
  - c. Developer is in compliance with its obligations in this Agreement and the "Community Development Block Grant Developer Agreement Project Number: CDBG-2021-12 Between City Of Aurora Illinois, Visionary Ventures NFP Corporation And West Aurora School District 129 For Todd School (100 Oak Avenue) Development Project" dated the same date as this Agreement.

**G. Permit Fees.** The City shall waive up to forty percent (40%) of the City-imposed building permit fees, and any other fees otherwise owed to the City, in connection with the Developer's construction of the Project. This waiver shall not extend to any impact fees to be paid relative to the Project.

#### **IV. DISTRICT'S OBLIGATIONS AND COMMITMENTS.**

A. **Limited Joinder.** The District joins this Agreement for the limited purposes of (1) meeting the requirements of the IGA, which requires in Section 2.F. that the District be a party hereto, (2) agreeing to be bound by the District's obligations, and (3) being benefitted by the City's and Developer's obligations, all in Sections II., III. and IV. of this Agreement.

B. **Additional Obligations Contained In IGA.**

- 1. The conveyance of the Todd School and the Lincoln School to Developer will be "as is" with no representations, warranties, or guarantees with respect to the condition of the land, structure(s), or other improvements,

including mechanical systems, provided, however, title shall be conveyed subject only to the exceptions described in Section 4.B. of the IGA.

2. As part of the redevelopment of the Todd School, the City has approved a plat of subdivision for the Todd School consisting of two (2) lots.

a. Lot 2 will be no less than three thousand five hundred (3,500) square feet and as much as four thousand (4,000) square feet of contiguous space at the northeast wing of the building (depicted on Exhibit C to the IGA) to be built out and improved by Developer for use by the District for office, examination, food distribution, health clinic and/or other school-related services. The build out will be designed by Developer and will be subject to the District's prior approval as to both design and materials used. The build out will include all public utilities, including potable water, sanitary sewer, gas, and electric services, as well as metering. The build out will also be paid entirely by the funds received by Developer pursuant to the CDBG Agreement, and the District shall have no financial responsibility for the design, labor, materials, fees, meters or permits relative to that build out as more particularly set forth in the CDBG Agreement.

b. Lot 1 will be the balance of the Todd School building, as well as the land and exterior improvements, to be improved by the Developer consistent with plans approved by the City, as well as any other governmental agency with jurisdiction over the Developer's planned use of the Unit.

c. Upon build out, and in consideration of the conveyance of the Todd School and Lincoln School, the Developer will convey fee simple of Lot 2 to the Board of Education of the District for its exclusive ownership and use. Upon such conveyance, the District will assume responsibility for monthly service charges for all public utilities for Lot 2, including potable water, sanitary sewer, gas, and electric services and all other expenses related to Lot 2 except as set forth below in subsection 4.d.

d. As set forth in Sections I.F.2(d) and I.F.2(e) of the CDBG Agreement, after Lot 2 has been built out and has received a final certificate of occupancy from the City, the School District and the City shall equally share the costs of structural matters for Lot 2, including roofing, windows, HVAC, windows and tuck-pointing. At all times, the Developer will remain responsible, at its sole cost and expense, for the exterior lighting, parking lots, landscaping, mowing, trimming, snow removal, and trash removal on the Property, and neither the School District nor the City shall have any responsibility or liability therefor.

e. Developer shall, without cost to the City or the District, grant to the District a permanent easement for as many as five (5) parking spaces in the parking lot at the Todd School depicted on Exhibit C to the IGA for District use, as well ingress and egress to Lot 2.

f. Notwithstanding any term in this Agreement to the contrary, Developer shall comply with all obligations of the “Developer” in the IGA, as amended in the CDBG Agreement.

## **V. OTHER PROJECT REQUIREMENTS.**

In addition to Developer’s obligation to perform this Agreement in accordance with all Federal, State, and City laws, ordinances, and regulations, all references to which shall include and incorporate amendments thereto after the Effective Date:

A. **Federal Law.** The Project and this Agreement shall be conducted and administered by Developer in compliance with applicable Federal civil rights and fair housing laws and regulations, including, but not limited to:

1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, *et seq.*, and implementing regulations issued at 24 C.F.R. Part 1;
2. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 2000d *et seq.*, as amended, and Developer shall administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
3. The Fair Housing Act, 42 U.S.C. § 3601, *et seq.*;
4. The Architectural Barriers Act, 42 U.S.C. § 4151, *et seq.*;
5. The Americans with Disabilities Act, 42 U.S.C. § 12111, *et seq.*;
6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*;
7. Executive Order 11063, as amended by Executive Order 12259, and implementing regulations in 24 C.F.R. Part 107;
8. The Age Discrimination Act of 1975, 42 U.S.C. § 6101, *et seq.*, and implementing regulations in 24 CFR Part 146; and
9. HOME regulations, including but not limited to, 24 C.F.R. § 29.504, *et seq.*
10. The Davis Bacon Act of 1931, 40 U.S.C. §§ 3141 to 3148.
11. Developer shall comply with the Federal Labor Standards and shall pay workers on the Project either the Davis Bacon Prevailing Wage Rates,

including the conducting of employee interviews of the contractor and/or subcontractors at the job site. The Developer shall require all contractors and subcontractors to submit weekly timesheets for all workers on the jobsite performing labor and shall also require that all payrolls include the worker's name, job title according to the locked in wage decision, wages and fringes, and lastly confirm that if fringes are not included, that they are paid in cash at an hourly rate to each worker.

- B. **No Discrimination.** The Project shall be conducted and administered by Developer in compliance with Section 109 of the Housing and Community Development Act of 1974 ("HCDA"), which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available to the HCDA.
- C. **Environmental Hazard Prevention.** Developer shall comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851-4856, and implementing regulations at 24 C.F.R. Part 35, subparts A, B, J, K, and R.
- D. **Eligible Contractors and Subcontractors Only.** Developer shall not use contractors or subcontractors debarred, suspended or ineligible from working on behalf of the United States Government, the State of Illinois, or the City in carrying out the Project.
- E. **No Unnecessary Purchases.** Developer shall not purchase unnecessary items with the Project Commitment, as set forth in 2 CFR § 200 *et seq.*
- F. **Bid Specifications.** Developer's bid specifications and/or work write-ups ("Bid Specifications") shall comply with the requirements as set forth in 2 C.F.R. § 200 *et seq.* which include but are not limited to the inclusion of a clear and accurate description of the technical requirements for the material, product or service to be procured (such description shall not contain features which unduly restrict competition); Developer shall assure the best available price for any contracts and subcontracts for construction activities associated with the Project and shall provide to City all materials requested by City so that the City is able to review and approve the construction cost estimates and determine that costs are reasonable. The City shall also utilize the cost reasonableness review of the Illinois Housing Development Authority (IHDA) to determine that costs are fair and reasonable. Developer shall provide City with copies of all executed contracts and provide a description, whenever practicable, of technical requirements in terms of functions to be performed, including the range of acceptable characteristics or minimum acceptable standards; specific features of "brand name or equal" descriptions that bidders are required to

meet; acceptance to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement; preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

1. Developer shall further, to the extent it is applicable, comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u, ("Section 3") by making efforts to offer training and employment opportunities to low and very low income residents of the Project area, should Developer find it necessary to hire additional employees to carry out the Project, and by making efforts to award contracts to Section 3 Business Concerns when contracting for the rehabilitation work involved in the Project. All Section 3 contracts shall include the following clauses (referred to as "Section 3 Clauses"):
  - (1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 ("HUD"), as amended, 12 U.S.C. § 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons (Section 3 workers and Targeted Section 3 workers) and to eligible businesses (Section 3 Businesses) and require the same of its contractors.
  - (2) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with such regulations.
  - (3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, notice advising the labor organization or workers' representative of contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
  - (4) The contractor agrees to include this Section 3 clause in every

subcontract subject to compliance with regulations in 24 CFR 75.9 or 24 CFR Part 75.19, as applicable, and agrees to take appropriate action, as provided in the applicable provision of the subcontract or in this Section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations of 24 CFR Part 75.

- (5) The contractor will certify that any vacant employment positions, including the training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.
  - (6) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
2. If sealed bids are required, Developer shall provide the City with a copy of the classified advertisements and the results from the bid opening. The contract award will be made in writing to the lowest qualified responsive and responsible bidder that meets specifications. Any or all bids may be rejected, if there is reason to believe that the low bidder will be unable to complete the project in accordance with the Bid Specifications, including, but not limited to, the following reasons: contractor has been debarred by the U.S. government from working on Federally-funded projects; contractor is unable to furnish any required bond; contractor has a poor record of past performance; or contractor's bid is unusually low in relation to other bids and contractor is not able to document how it will be able to meet the Bid Specifications for the amount bid. Developer shall include in any invitation for bids or work write-up being used to solicit bids, the statement "Minorities and women contractors and Section 3 businesses are encouraged to submit bids." Developer shall send an invitation to bid to the Minority Business Enterprise ("MBE") and Woman-owned Business Enterprise ("WBE") firms currently listed with the City, as appropriate for the type of work to be done. Developer shall also send an invitation to bid to all known Section 3 business concerns within the project area.
4. Except as otherwise required by law, ordinance, or regulation, Developer may follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, except for construction contracts or subcontracts entered into by Developer exceeding One Hundred Thousand and Fifty and No/100 Dollars (\$150,000.00). Such construction contracts or subcontracts must meet the following requirements: a bid

guarantee from each bidder equivalent to Five Percent (5%) of the bid amount shall be obtained consisting of a bid bond, certified check, or other negotiable instrument; a performance bond on the part of the contractor for One Hundred Percent (100%) of the contract price shall be required; and a payment bond on the part of the contractor for One Hundred Percent (100%) of the contract price shall be required.

5. Developer shall provide the City with copies of all executed contracts for the Project.
- G. **No Conflict of Interest.** In the acquisition and disposition of real property and the provision of assistance, in accordance with 24 C.F.R. § 570.611, no person who exercises or has exercised any functions or responsibilities with respect to HOME activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from an HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to an HOME-assisted activity, or with respect to the proceeds of the HOME-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. This applies to any person who is an employee, agent, consultant, or officer of Developer.
- H. **No Prohibited Political Activities.** Developer agrees that to the best of its knowledge, neither the Project nor the personnel employed by Developer shall be in any way or to any extent engaged in the conduct of political activities in contravention of the Hatch Act, 5 U.S.C. § 1501, *et seq.*
- I. **No Bribes or Undue Influence.** Developer certifies, to the best of its knowledge and belief, pursuant to 31 U.S.C. § 1352, that:
  1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Developer, to any person for influencing or attempting to influence an officer or employee of an agency of the United States, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a member of the United States Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and
  2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a member of the United States Congress in connection

with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standards Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

- J. **Materiality.** The promises of Developer in this Agreement are a material representation of fact upon which reliance was placed when this transaction was made or entered into. Developer’s agreement with these certifications is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.
- K. **Drug Free Workplace.** Developer certifies that it will provide a drug-free workplace in compliance with the Drug Free Workplace Act of 1988, 41 USC § 701, *et seq.* and 24 CFR § 24.600, *et seq.*, and Developer shall, simultaneous with execution of this Agreement, execute the drug free workplace certification attached hereto as **Exhibit J** and made a part hereof.
- L. **No Choice Limiting Actions.** Developer represents and warrants that it has not taken any choice limiting actions, and is unaware of any choice limitations actions being taken, with regard to the Project, per 24 C.F.R. § 58.22.

## **VI. RECORDS, REPORTS, AND NOTICES.**

- A. **Inspection.** Developer authorizes the City, HUD, and the Comptroller General of the United States to conduct on-site reviews, to examine, inspect, and audit Developer’s records and to conduct any other procedures or practices to assure compliance with the provisions of this Agreement upon demand, including inspections of the Project Property at any reasonable time.
- B. **Annual Reports.** Developer shall submit its annual financial statement to the City within thirty (30) days of the completion of the annual financial statement, which annual financial statement shall include statements of all receipts of Developer’s income, annual revenue, expenses and capital reserves. The Annual Report shall also contain an affidavit attesting to Developer’s continued compliance with this Agreement or other proof of compliance reasonably requested by the City.
- C. **Notification of Sale.** Developer shall give the City notice at least thirty (30) days before any controlling interest in Developer or the entity managing the Project, is sold or transferred.
- D. **Production of Documents.** At the request of the City, Developer shall furnish immediately, if required by the Comptroller General of the United States, otherwise within three (3) business days of such request, such reports, budgets, certifications and other documents and/or information required pursuant to Federal, State, or City laws, ordinances, regulations, rules, and/or policies that are applicable to the Project, and Developer shall give specific

answers to questions from the City, from time to time, relative to the Project.

- E. **Audit.** Developer shall, each year as long as the Project remains in effect, complete an audit of the Project, conducted by an independent Certified Public Accountant, and shall submit a copy of the audit report to City within six (6) months of the close of Developer's year end.
- F. **Proof of Compliance.** Developer shall submit to the City all required information to show compliance with applicable Federal, State, and City laws, rules and regulations, as specified in this Agreement, including but not limited to:
1. Its marketing plan, which plan must be in compliance with 24 C.F.R. § 92.351, as required by 24 C.F.R. § 92.504(c)(2)(v), and with the City's affirmative marketing policy attached as **Exhibit K**;
  2. A copy of Developer's tenant qualifications policy and application forms and documents;
  3. Tenants' data on race, ethnicity, gender of single head-of-households, and other data requested by City necessary to complete City's reporting requirements to HUD; and
  4. Developer shall provide a progress report ("Progress Report") to the City by the tenth (10<sup>th</sup>) day of each month, reporting on the status of the Project. Developer shall provide Progress Reports after the Effective Date, and shall continue to provide such Progress Reports throughout the duration of the project until all units are occupied by income eligible tenant households and the project is marked as complete in HUD's Integrated Disbursement and Information System (IDIS).
- G. **Maintenance of Records.** Developer shall maintain the following records during the term of this Agreement and, where applicable, for up to five (5) years thereafter:
1. For a period of five (5) years after the Project is complete: documentation of all activities undertaken in connection with Developer's marketing plan.
  2. For as long as Developer owns a Property and for five (5) years thereafter: all financial records pertaining to the rehabilitation, construction, and maintenance of the Property.
  3. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five year

period, whichever is later.

4. Developer shall cooperate with the City to facilitate the maintenance of any and all other financial records as requested by the City for the length of time requested.

- H. **Uniform Administrative Requirements.** Developer shall comply with all uniform administrative requirements as described in 24 C.F.R. § 92.505, as required by 24 C.F.R. §92.504(c)(2)(iii). Developer agrees to comply with 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls and maintain necessary source documentation for all costs incurred.

## **VII. SUSPENSION AND TERMINATION; REVERSION OF ASSETS.**

- A. **Suspension or Termination for Material Failure.** The City may suspend or terminate this Agreement if Developer materially fails to comply with any term of this Agreement. The Agreement may also be terminated for convenience in accordance with 24 C.F.R. § 85.44.
- B. **Termination for Breach, Abandonment or Impossibility.** The City may terminate this Agreement for Developer's breach of the Agreement, abandonment of the Project, or occurrence rendering impossible the performance by Developer of its obligations under this Agreement.
- C. **Notice of Termination.** In the event City elects to suspend and/or terminate this Agreement, for any reason stated in Subsection VII.A., and/or Subsection VII.B., the City shall notify Developer in writing of such action, specifying the particular deficiency. Developer shall have a period of thirty (30) days after such notice is given within which to cure the default prior to exercise of remedies by the City under this Agreement.
- D. **Reversion of Assets.** Upon termination of this Agreement, Developer shall immediately refund any unspent Project Commitment received by Developer from the City, within ten (10) days of the date of termination.

## **VIII. REMEDIES.**

- A. **Indemnification for Project Commitment Repayment.** In the event of any violation or breach of this Agreement by Developer, misuse or misapplication of funds derived from this Agreement by Developer, or any violation of any of the Federal, State, or City laws, regulations, or ordinances, directly or indirectly, by Developer, or any of its employees, agents, or representatives, then Developer, to the fullest extent permitted by law, agrees to indemnify, defend and hold the City harmless from any requirement to repay to HUD the

Project Commitment received by Developer for this Project or penalties and expenses, including attorneys' fees and other costs of litigation, resulting from such action or omission by Developer.

- B. **Notice of Claim.** In the event HUD, or any other Federal agency, makes any claim which would give rise to invoking the remedy provisions set forth in this Section VIII., the City or Developer shall immediately notify the other Party, in writing, providing the full details of the alleged violation. Developer shall have the right to contest the claim, in its own name or in the name of the City, with its consent, through all levels of any administrative proceedings or in any court of competent jurisdiction without any cost to the City. Upon any final adjudication, or upon any settlement agreed to between Developer and the Federal agency, Developer shall promptly pay any funds found due and owing.
- C. **Compromise of Claim.** If the City is subject to a claim set forth in Subsections VIII.A. and/or VIII.B. above, and if the City is not subject to loss of any Federal funding other than the HOME funds subject to this Agreement, Developer shall have the authority to settle or compromise any claim and to pay any judgment to the Federal government.
- D. **Loss of Federal Funds.** If the City has lost, or been prevented from receiving, any Federal funds, other than the funds for the Project, as a result of any alleged violation subject to the remedy provisions in this Section, Developer shall repay, upon demand by the City, such amount of funding due, as a result of the alleged breach.
- E. **Indemnification, Defense and Hold Harmless.** To the fullest extent allowed by law, Developer shall assume the defense of and shall pay, defend, indemnify, and hold harmless the City, its designees, officers, employees, and agents from all suits, actions, claims, mechanics' liens, demands, damages, losses, expenses, and costs of every kind and description to which the City, its designees, and its employees may be subject by reason of any act or omission of Developer, its agents or employees, in undertaking and performing under this Agreement. Developer's indemnification obligation hereunder shall include the payment of the City's reasonable attorney's fees, expert witness fees, litigation costs and court costs. The City shall have its choice of counsel, and the authority to direct its own defense.
- F. **No Waiver by Delay or Otherwise.** Any delay by the City and/or Developer in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City and/or Developer should not be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific default of Developer be considered or treated as a waiver of the

rights by the waiving City of any future default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

- G. **Rights and Remedies Cumulative.** The rights and remedies of the City and Developer under this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by the City and/or Developer, at that time or different times, of any other such remedies.
- H. **Agreement to Pay Attorneys' Fees and Expenses.** In the event Developer breaches this Agreement and the City employs an attorney or attorneys or incurs other expenses for the collection of the payments due under this Agreement, or the enforcement of performance or observance of any obligation or agreement herein contained, Developer shall pay, on demand, the City's reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action.
- I. **No Environmental Representations or Warranties by City.** The City makes no warranties or representations regarding, nor does it indemnify Developer with respect to, the existence or nonexistence on or in the vicinity of the Project Area of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Project Area as well as any activity claimed to have been undertaken on or in the vicinity of the Project Area, that would cause or contribute to causing (1) a property in the Project Area to become a treatment, storage or disposal facility within the meaning of, or otherwise bring a property the Project Area within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.*, or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from a property in the Project Area, within the meaning of, or otherwise bring a property in the Project Area within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, or any

similar State law or local ordinance. Further, the City makes no warranties or representations regarding, nor does the City indemnify Developer with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within or in the vicinity of a property the Project Area, of any substances or conditions in or on a property the Project Area, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The City makes no representations or warranties regarding the existence of any above ground or underground tanks in the Project Area, or whether any above or underground tanks have been located under, in the Project Area have subsequently been removed or filled.

- J. **Waiver.** Developer waives any claims against the City, its designees, officers, employees and agents, for indemnification, contribution, reimbursement or other payments arising under Federal, State and common law relating to the environmental condition of the land comprising the Project Area.

#### **IX. MISCELLANEOUS PROVISIONS.**

- A. **Amendments.** No modifications, additions, deletions, or the like, to this Agreement shall be effective unless and until such changes are executed in writing by the authorized officers of each Party. Developer acknowledges that HUD may from time to time issue updated guidance regarding the HOME program that may require amendment of this Agreement, and agrees to cooperate with the City in making such an amendment.
- B. **Subject to Financial Assistance.** The City's obligations under this Agreement are made subject to the terms of financial assistance agreements between the City and HUD, and in the event of a conflict between the terms of this Agreement and the financial assistance agreements between the City and HUD, the terms of the financial assistance agreements shall supersede and control.
- C. **Assignment.** Developer shall not assign this Agreement or any part thereof without the written approval of the City having first been obtained, which may be withheld in the City's sole discretion.
- D. **Attorney's Opinion.** Developer shall, upon request, provide an opinion of its attorney, in a form reasonably satisfactory to the Corporation Counsel of the City, that all steps necessary to adopt this Agreement, in a manner binding upon Developer, have been taken by Developer.
- E. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- F. **Term.** Unless terminated by the City, this Agreement shall remain in effect for the

entirety of the Affordability Period, defined above. Developer's indemnification obligations in Section VIII. shall survive the termination, or expiration, of this Agreement. Upon expiration of this Agreement, Developer must transfer to the City any HOME Commitment in Developer's possession as of the time of expiration of this Agreement, and Developer must transfer to the City any accounts receivable attributable to the use of HOME Commitment in Developer's possession as of the time of expiration of the Agreement, as required by 24 C.F.R. § 29.504(c)(2)(vii).

- G. **No Partnership.** Nothing contained in this Agreement, any mortgage, note or any other document or instrument related to this Project shall be deemed to create a joint venture, partnership relationship, or employer/employee relationship between the City and Developer. Developer shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement.
- H. **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) facsimile, (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to City:                      City of Aurora  
   44 E. Downer Place  
   Aurora, Illinois 60507-2067  
   Attention: City Mayor

And:                              City of Aurora, Law Department  
   The Elmslie Building  
   1 S. Broadway, 3rd Floor  
   Aurora, Illinois, 60507  
   Attention: Corporation Counsel

If to Developer:              Visionary Ventures NFP Corporation  
   232 S. Oak St.  
   Itasca, IL 60143-2052

And:                              JM Developers, LLC  
   346 N. Lake Street  
   Aurora, IL 60506  
   Attention: Michael Poulakidas

And:                              Applegate & Thorne-Thomsen, P.C.  
   425 S. Financial Place, Suite 1900  
   Chicago, IL 60605  
   Attention: Nicholas Brunick

If to District:

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The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch, and proof or receipt, by facsimile. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received upon deposit with the United States Postal Service.

- I. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- J. **Choice of Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and any court proceedings between the Parties hereto shall be brought in the Circuit Court of Kane County, Illinois.
- K. **No Personal Liability of Officials of the City.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Corporate Authorities, any elected official, officer, partner, member, shareholder, manager, director, agent, employee or attorney of the City, in his or her individual capacity, and no elected official, officer, agent, employee or attorney of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.
- L. **Municipal Limitations.** All City commitments hereunder are limited to the extent required by law.
- M. **Effective Date.** The Effective Date for this Agreement shall be the day on which the City Mayor affixes his signature hereto.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the dates recited below to be effective on the date first written above.

**CITY:**

City of Aurora, an Illinois home rule municipal corporation

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

**DEVELOPER:**

Visionary Ventures NFP Corporation, an Illinois not-for-profit corporation

By: \_\_\_\_\_

Name: Shelly Tucciarelli

Its: Executive Director

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

**DISTRICT:**

West Aurora School District 129, an Illinois public school district

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

## ACKNOWLEDGMENT

State of Illinois       )  
                                  ) SS  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Manager, he or she signed and delivered the said instrument as his or her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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Notary Public

## ACKNOWLEDGEMENT

State of Illinois       )  
                                  ) SS  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Manager, he or she signed and delivered the said instrument as his or her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

## ACKNOWLEDGEMENT

State of Illinois       )  
                                  ) SS  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Manager, he or she signed and delivered the said instrument as his or her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

**Exhibit A** – IGA



CITY OF AURORA, ILLINOIS

RESOLUTION NO. R20-326  
DATE OF PASSAGE December 22, 2020

A Resolution authorizing an Intergovernmental Agreement between the City of Aurora and the Board of Education of West Aurora School District 129 involving the Conveyance, Renovation and Beneficial Reuse of the Todd and Lincoln School Properties.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, West Aurora School District 129 and the City are proposing entering into separate Intergovernmental Agreement involving the conveyance, renovation and beneficial reuse of the Todd and Lincoln School Properties; and

WHEREAS, the City recognizes and appreciates the need for the School District to expand its ability to provide much needed student support services in a centralized location to meet the demands of the community as well as repurpose two historic vacant properties; and

WHEREAS, the City recognizes and appreciates the need for providing additional affordable workplace housing near its downtown and facilitating redevelopment agreements for both Todd and Lincoln with a developer who will in turn provide the necessary office space required by the School District for student support services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows: that the Intergovernmental Agreement attached to this Resolution as Exhibit A shall be and hereby is approved; and further

BE IT RESOLVED, that the Mayor shall be and hereby is authorized to execute said Intergovernmental Agreement in substantially the same form as attached to this Resolution; and further

RESOLUTION NO. R20-326  
DATE OF PASSAGE December 22, 2020

BE IT RESOLVED, that the officers of and employees of the City shall be and hereby are authorized and empowered to take all actions necessary and proper to carry the purposes of said the Intergovernmental Agreement into execution in accordance with its terms, including, specifically, all actions required to accept the conveyance of the real property from the School District as contemplated by the Agreement.

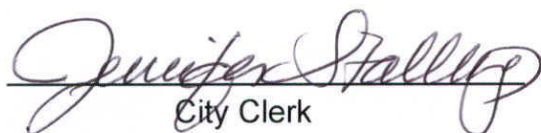
RESOLUTION NO. R20-326


PASSED AND APPROVED ON December 22, 2020

AYES 12 NAYS 0 NOT VOTING 0 ABSENT 0

ALDERMAN	Vote
Alderman Llamas, Ward 1	yes
Alderman Garza, Ward 2	yes
Alderman Mesiacos, Ward 3	yes
Alderman Donnell, Ward 4	yes
Alderman Franco, Ward 5	yes
Alderman Saville, Ward 6	yes
Alderman Hart-Burns, Ward 7	yes
Alderman Smith, Ward 8	yes
Alderman Bugg, Ward 9	yes
Alderman Lofchie, Ward 10	yes
Alderman Jenkins, At Large	yes
Alderman O'Connor, At Large	yes

ATTEST:

  
City Clerk

  
Mayor

20-0862

**RECOMMENDATION**

TO: THE COMMITTEE OF THE WHOLE

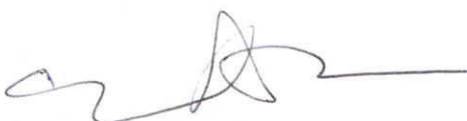
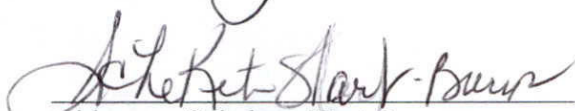
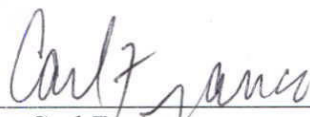
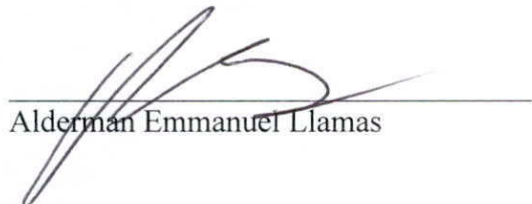
FROM: THE FINANCE COMMITTEE

The Finance Committee at the regular scheduled meeting on **Thursday, December 22, 2020**

Recommended **APPROVAL** of a Resolution authorizing an Intergovernmental Agreement between the City of Aurora and the Board of Education of West Aurora School District 129 involving the Conveyance, Renovation and Beneficial Reuse of the Todd and Lincoln School Properties.

Vote 4-1

Submitted By:

  
Alderman Robert O'Connor, Chairperson  
Alderman Edward Bugg, Vice Chairperson  
Alderman Scheketa Hart-Burns  
Alderman Carl Franco  
Alderman Emmanuel Llamas

Dated this 22nd day of December, 2020

**BOARD OF EDUCATION OF  
WEST AURORA SCHOOL DISTRICT 129,  
KANE COUNTY, ILLINOIS**

**RESOLUTION RE:  
TODD SCHOOL AND LINCOLN SCHOOL**

WHEREAS, this Board of Education (hereinafter "Board") is the duly-elected governing board of West Aurora School District 129, Kane County, Illinois (hereinafter "School District"); and

WHEREAS, this Board is the owner of record of Todd School (legally described on Exhibit A attached hereto and made a part hereof); and

WHEREAS, this Board is the owner of record of Lincoln School (legally described on Exhibit B attached hereto and made a part hereof); and

WHEREAS, this Board has received reports and recommendations from the Administration of this School District regarding the needs and conditions of the District as it relates to the District's educational facilities; and

WHEREAS, the reports and recommendations so received establish that Todd School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the District; and

WHEREAS, the reports and recommendations so received establish that Lincoln School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the District; and

WHEREAS, this Board of Education finds and determines that Todd School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the District; and

WHEREAS, this Board of Education finds and determines that it is in the best interests of the School District to transfer all right, title and interest in Todd School to the City of Aurora, Illinois upon such terms and conditions as set forth in the Intergovernmental Cooperation Agreement Between the City of Aurora, Illinois and West Aurora School District 129, Kane County, Illinois attached hereto and made a part hereof as Exhibit C; and

WHEREAS, this Board of Education finds and determines that Lincoln School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the District; and

WHEREAS, this Board of Education finds and determines that it is in the best interests of the School District to transfer all right, title and interest in Lincoln School to the City of Aurora, Illinois upon such terms and conditions as set forth in the Intergovernmental Cooperation Agreement a Between the City of Aurora, Illinois and West Aurora School District 129, Kane County, Illinois attached hereto and made a part hereof as Exhibit C.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Board of Education of West Aurora School District 129, Kane County, Illinois as follows:

SECTION ONE: That the preambles to this Resolution are hereby adopted, ratified, and confirmed as if fully set forth and restated in this SECTION ONE *verbatim*.

SECTION TWO: That the Intergovernmental Cooperation Agreement Between the City of Aurora, Illinois and West Aurora School District 129, Kane County, Illinois attached hereto as Exhibit C is hereby adopted, ratified, and approved as if fully set forth and restated in this SECTION TWO *verbatim*.

SECTION THREE: That the President and Secretary of this Board are hereby authorized and directed to affix their signatures to this Resolution and the Intergovernmental Cooperation Agreement Between the City of Aurora, Illinois and West Aurora School District 129, Kane County, Illinois, and the Administration of this School District, and its legal counsel, shall have the authority to take all actions and perform all tasks necessary to fulfill the commitments set forth in the Intergovernmental Cooperation Agreement.

SECTION FOUR: That this Resolution shall be in full force and effect forthwith upon and after its adoption, and all resolutions or parts of resolutions in conflict herewith are hereby repealed.

ADOPTED this 4 day of January, 2021 by the following roll call vote:

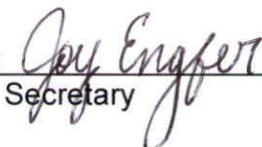
AYE: Robert Gonzalez, Richard Kevins, Ira Lathan, Melody Superston,  
Valerie Brown Dykstra, Christopher Sparks, & Thomas St. Jules

NAY: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

BOARD OF EDUCATION OF  
WEST AURORA SCHOOL DISTRICT 129  
KANE COUNTY, ILLINOIS

  
\_\_\_\_\_  
Its President

Attest:   
\_\_\_\_\_  
Secretary

**EXHIBIT A**

**Legal Description of Todd School  
265 W. New York Street  
Aurora, Illinois**

Lots 1 through 4 in Block 8 of Gale's Addition to  
the City of Aurora, Kane County, Illinois

PIN: 15-22-159-001

**EXHIBIT B**

**Legal Description of Lincoln School  
641 S. Lake Street  
Aurora, Illinois**

Lots 5 through 9 in Block 2 of Wagner's Second Addition to  
the City of Aurora, Kane County, Illinois

PINs: 15-28-129-008  
15-28-129-025

## **EXHIBIT C**

### **INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITY OF AURORA, ILLINOIS AND WEST AURORA SCHOOL DISTRICT 129, KANE COUNTY, ILLINOIS**

#### **WITNESSETH:**

WHEREAS, the City of Aurora, Illinois (hereinafter "CITY") is a home rule municipality operating under the authority of Article VII of the Constitution of the State of Illinois and the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*); and

WHEREAS, West Aurora School District 129, Kane County, Illinois (hereinafter "SCHOOL DISTRICT") is a public school district operating under the authority of Article X of the Constitution of the State of Illinois and the Illinois School Code (105 ILCS 5/1-1 *et seq.*); and

WHEREAS, Article VII, Section 10 of the Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) authorize units of local government, including municipalities, and school districts to contract and otherwise associate among themselves to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, Section 5-22 of the Illinois School Code (105 ILCS 5/5-22) and Section 2 of the Local Government Property Transfer Act (50 ILCS 605/2) provide, in pertinent part, that if the territory of any school district shall be partly within and partly without the corporate limits of any municipality, the board of education of the school district shall have the power to transfer all right, title and interest held by it immediately prior to such transfer, in and to such real estate, to the municipality upon such terms as may be agreed upon by the corporate authorities of both the school district and the municipality, and thereafter the municipality receiving title to such real estate shall have

the right to use, occupy or improve the real estate so transferred for any municipal or public purpose and shall hold said real estate by the same right, title and interest by which the transferor municipality held said real estate immediately prior to said transfer; and

WHEREAS, the territory of the SCHOOL DISTRICT is partly within and partly without the corporate limits of the CITY; and

WHEREAS, the SCHOOL DISTRICT's Todd School (legally described on Exhibit A attached hereto and made a part hereof) and the SCHOOL DISTRICT's Lincoln School (legally described on Exhibit B attached hereto and made a part hereof) are each within the territories and corporate limits of the SCHOOL DISTRICT and the CITY; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT has heretofore determined that Todd School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the SCHOOL DISTRICT; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT has heretofore determined that Lincoln School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the SCHOOL DISTRICT; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT hereby finds and determines that it is in the best interests of the SCHOOL DISTRICT to transfer all right, title and interest in Todd School to the CITY upon such terms and conditions set forth below; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT hereby finds and determines that it is in the best interests of the SCHOOL DISTRICT to transfer all right,

title and interest in Lincoln School to the CITY upon such terms and conditions set forth below; and

WHEREAS, the City Council of the CITY has found and determined that it is in the best interests of the CITY to accept all right, title, and interest in Todd School from the SCHOOL DISTRICT upon such terms and conditions set forth below; and

WHEREAS, the City Council of the CITY has found and determined that it is in the best interests of the CITY to accept all right, title, and interest in Lincoln School from the SCHOOL DISTRICT upon such terms and conditions set forth below; and

WHEREAS, the CITY understands and values the importance of the SCHOOL DISTRICT and the invaluable services it provides to the CITY's community; and

WHEREAS, the CITY recognizes and appreciates the need for the SCHOOL DISTRICT to expand its current ability to provide much-needed student support services in order to meet the demands of the community and improve the general health, well-being, and overall functioning of SCHOOL DISTRICT students and their families; and

WHEREAS, the CITY recognizes the benefits to the community derived from the SCHOOL DISTRICT's student support services and, therefore, wishes to collaborate with the DISTRICT to facilitate the best way for the SCHOOL DISTRICT to provide said services; and

WHEREAS, the SCHOOL DISTRICT and the CITY acknowledge and agree that in order to accomplish the foregoing it will be necessary for the Todd School building to be redeveloped and renovated, which such redevelopment and renovation will need to be accomplished by a third party (the "Developer") pursuant to a Development Agreement with the CITY and a conveyance of the Todd School building by the CITY to

such Developer, which Development Agreement and conveyance shall include the obligations and uses described in Section Two hereof; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT and the City Council of the CITY find and determine that it is in each of their respective best interests to enter into this Intergovernmental Cooperation Agreement.

NOW, THEREFORE, BE IT AND IT IS HEREBY AGREED by the CITY and the SCHOOL DISTRICT as follows:

SECTION ONE: That the preambles to this Intergovernmental Cooperation Agreement are hereby found to be true and correct and are hereby incorporated herein as if fully set forth and restated in this Section One *verbatim*.

SECTION TWO: That the Board of Education of the SCHOOL DISTRICT will, in accordance with the terms and conditions set forth below, convey all right, title and interest in Todd School, its grounds, building, fixtures, and improvements to the CITY to be used by the CITY for redevelopment to provide suitable housing for residents of the CITY and other uses ancillary thereto. The parties acknowledge that the provisions of this section with respect to the Todd School building will be accomplished by means of a Development Agreement with, and a conveyance of the property to, a Developer capable of completing the redevelopment and renovation of the building in a manner meeting the SCHOOL DISTRICT's needs and, upon the execution of a Development Agreement and such conveyance, the CITY will be relieved of any further obligations with respect to the same and the SCHOOL DISTRICT agrees to accept the Developer as the party responsible to provide compliance with the terms and conditions as described in this Section Two. This conveyance, and any Development Agreement and

subsequent conveyance of the Todd School building to a Developer, shall be subject to the following conditions and restrictions:

- A. The conveyance of Todd School will be "as is" with no representations, warranties, or guarantees with respect to the condition of the land, structure(s), or other improvements, including mechanical systems, provided, however, title shall be conveyed subject only to the exceptions described in Section 4 B hereof.
- B. As part of the redevelopment of Todd School, the Developer will petition the CITY for, and the CITY will approve, a plat of condominium for Todd School consisting of two (2) units.
  - 1. Unit 1 will be no less than 3,500 and as much as 4,000 square feet of contiguous space at the northeast wing of the building (depicted on Exhibit C attached hereto and made a part hereof) to be built out and improved by the Developer for use by the SCHOOL DISTRICT for office, examination, food distribution, and other school-related services. The build out will be designed by the Developer and will be subject to the SCHOOL DISTRICT's prior approval as to both design and materials used. The build out will include all public utilities, including potable water, sanitary sewer, gas, and electric services, as well as metering. The build out will also be paid entirely by the Developer and the SCHOOL DISTRICT shall have no financial responsibility for the design, labor, materials, fees, meters or permits relative to that build out.
  - 2. Unit 2 will be the balance of the Todd School building, as well as the land and exterior improvements, to be improved by the Developer consistent with plans approved by the CITY, as well as any other governmental agency with jurisdiction over the Developer's planned use of the Unit.
- C. Upon build out, and in consideration of the conveyance of Todd School and Lincoln School, the Developer will convey fee simple of Unit 1 to the Board of Education of the SCHOOL DISTRICT for its exclusive ownership and use. Upon such conveyance, the SCHOOL DISTRICT will assume responsibility for monthly service charges for all public utilities for Unit 1, including potable water, sanitary sewer, gas, and electric services.
- D. At all times, the Developer will remain responsible for all structural matters, including exterior walls, windows, roofing, and exterior lighting for the entire building, as well as outdoor maintenance, including sidewalks, parking lots, landscaping, mowing, trimming, snow removal, trash removal, and the like, and the SCHOOL DISTRICT will have no responsibility or liability therefor.

- E. The Developer will, without cost, grant to the SCHOOL DISTRICT a permanent easement for as many as five (5) parking spaces in the parking lot depicted on Exhibit C for School District use, as well ingress and egress to Unit 1.
- F. To ensure that the Developer's obligations to the SCHOOL DISTRICT as set forth in this Section Two are fulfilled, the SCHOOL DISTRICT will be a party to the Development Agreement between the Developer and the CITY.
- G. The SCHOOL DISTRICT's rights set forth in this Section Two shall be a right running with the land and binding on all successors and assigns of the CITY and the Developer, and the SCHOOL DISTRICT shall have the right to record a memorandum of such rights in the office of the Recorder of Kane County, Illinois.

SECTION THREE: That the Board of Education of the SCHOOL DISTRICT will, in accordance with the terms and conditions set forth below, convey all right, title, and interest in Lincoln School, its grounds, building, fixtures, and improvements to the CITY to be used by the CITY to provide suitable housing for residents of the CITY and other uses ancillary thereto. This conveyance shall be subject to the following conditions and restrictions:

- A. The conveyance of Lincoln School will be "as is" with no representations, warranties, or guarantees with respect the condition of the land, structure(s), or other improvements, including mechanical systems, provided, however, title shall be conveyed subject only to the exceptions described in Section 4 B hereof.

SECTION FOUR: The conveyance of Todd School and Lincoln School shall be made on the following timetable and manner:

- A. The SCHOOL DISTRICT will prepare and deliver quit claim deeds to Todd School and to Lincoln School to the CITY at a closing to be held on or before January 31, 2021.
- B. No less than fourteen (14) days prior to closing, the SCHOOL DISTRICT will deliver to the CITY commitments for title insurance in the minimal amount

issued by Chicago Title Insurance Company, evidencing the SCHOOL DISTRICT's clear and merchantable title to each of Todd School and Lincoln School, subject only to easements; covenants, conditions, restrictions, and rights of way of record; zoning law and ordinances; and such other title exceptions as may be acceptable to the CITY. The SCHOOL DISTRICT shall bear the cost of the title commitments in the minimal amount. Any additional limits of title insurance shall be borne by the CITY.

- C. No less than fourteen (14) days prior to closing, the SCHOOL DISTRICT will deliver to the CITY (1) any boundary and other surveys of Todd School and Lincoln School that it has in its possession; and (2) any maintenance records of the building systems of Todd School and Lincoln School that it has in its possession.
- D. Possession of Todd School and Lincoln School shall be delivered to the CITY at the time of closing and, thereafter, responsibility for property maintenance and public utilities (water, sanitary sewer, gas and electric) will shift from the SCHOOL DISTRICT to the CITY.
- E. The Administrations of the SCHOOL DISTRICT and the CITY, as well as their legal counsel, shall have the authority to take all actions and perform all tasks necessary to close these conveyances in the time and manner expressed herein.

SECTION FIVE: The SCHOOL DISTRICT shall indemnify, defend and hold harmless the CITY, its elected officials, employees and agents, from and against all actions, causes of action, claims, demands, lawsuits, costs and expenses and liability

for damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organizations arising prior to the closing date, and the CITY shall indemnify, defend and hold harmless the DISTRICT, its elected officials, employees and agents, from and against all actions, causes of action, claims, demands, lawsuits, costs and expenses and liability for damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organizations arising subsequent to the closing date, and prior to any subsequent conveyance of the property, excluding such actions, claims demands, lawsuits and liability for damages to persons or property arising solely from the negligence or willful misconduct of the indemnified party, its officers, employees or agents. Said sums shall include, in the event of legal action, court costs, expenses of litigation, and reasonable attorney's fees. The costs, salary and expenses of the City Corporation Counsel and members of his/her office shall be considered as "attorney fees" for the purpose of this paragraph.

SECTION SIX: Any notices to be provided under this Intergovernmental Cooperation Agreement shall be in writing and addressed:

To the CITY:

Richard J. Veenstra  
Corporation Counsel  
City of Aurora  
44 W. Downer Place  
Aurora, IL 60506

To the SCHOOL DISTRICT:

Dr. Jeff Craig  
Superintendent  
West Aurora School District 129  
1877 W. Downer Place  
Aurora, IL 60506

SECTION SEVEN: This Intergovernmental Cooperation Agreement is entered into, and is to be construed and enforceable in accordance with, the laws of the State of

Illinois and venue for any suit, action, or proceeding arising under or in connection with this agreement shall exist exclusively in the Circuit Court of Kane County, Illinois.

SECTION EIGHT: Neither this Intergovernmental Cooperation Agreement nor any of its terms may be changed, modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, modification, waiver, or termination is sought.

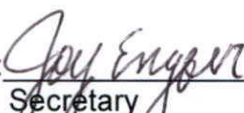
IN WITNESS WHEREOF, the parties have executed this Intergovernmental Cooperation Agreement as of the dates set forth below.

BOARD OF EDUCATION OF  
WEST AURORA SCHOOL DISTRICT 129  
KANE COUNTY, ILLINOIS

  
\_\_\_\_\_  
Its President

CITY OF AURORA, ILLINOIS

  
\_\_\_\_\_  
Its Mayor

Attest:   
\_\_\_\_\_  
Secretary

Date: 1/4/21

Attest:   
\_\_\_\_\_  
City Clerk

Date: 1-5-21

**EXHIBIT A**

**Legal Description of Todd School  
265 W. New York Street  
Aurora, Illinois**

Lots 1 through 4 in Block 8 of Gale's Addition to  
the City of Aurora, Kane County, Illinois

PIN: 15-22-159-001

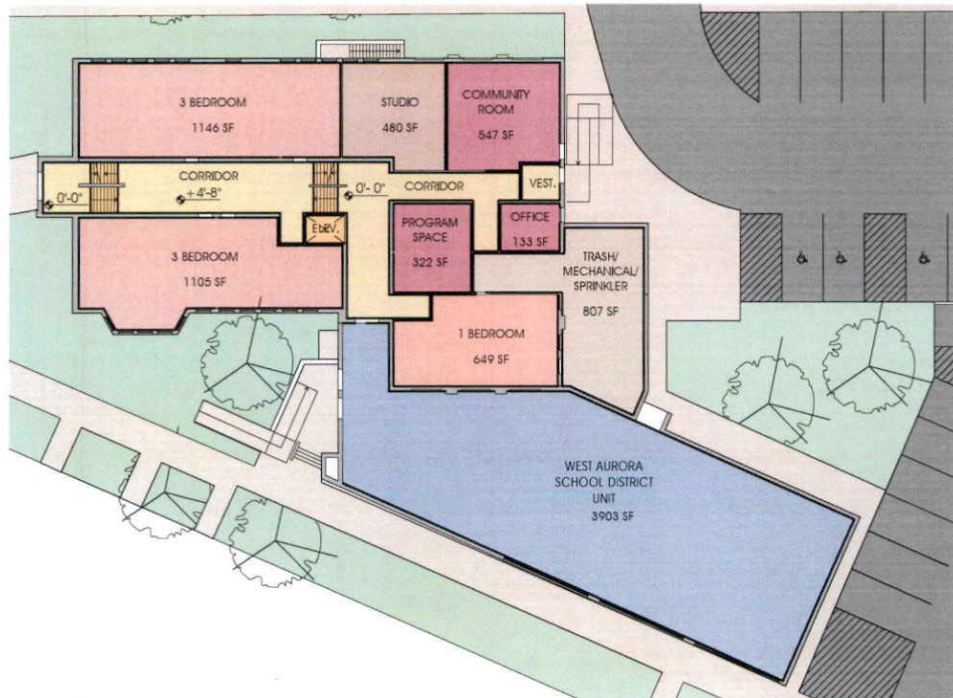
**EXHIBIT B**

**Legal Description of Lincoln School  
641 S. Lake Street  
Aurora, Illinois**

Lots 5 through 9 in Block 2 of Wagner's Second Addition to  
the City of Aurora, Kane County, Illinois

PINs: 15-28-129-008  
15-28-129-025

# EXHIBIT C



## EXISTING BUILDING INFORMATION:

BUILDING FOOTPRINT = 11,175 SF

ABOVE GRADE - 2 FLOORS  
BELOW GRADE - 1 FLOOR

## TOTAL BUILDING AREA:

- FLRS. BELOW GRADE (1) = 4,022 SF
- FLRS. ABOVE GRADE (2) = 17,845 SF
- TOTAL AREA = 21,867 SF

## UNIT TYPES:

- STUDIO UNITS = 02
- 1 BEDROOM UNITS = 03
- 2 BEDROOM UNITS = 01
- 3 BEDROOM UNITS = 06
- TOTAL UNITS = 12

CONCEPTUAL PLAN - FIRST FLOOR

TODD SCHOOL ADAPTIVE REUSE

100 OAK/265 W. NEW YORK ST.

09.29.2020

TOD-03

# EXHIBIT C



## SITE INFORMATION:

PRESUMED SITE AREA = 1.2 ACRES

## EXISTING BUILDING INFORMATION:

BUILDING FOOTPRINT = 11,175 SF

ABOVE GRADE - 2 FLOORS

BELOW GRADE - 1 FLOOR

## TOTAL BUILDING AREA:

- FLRS. BELOW GRADE (1) = 4,022 SF
- FLRS. ABOVE GRADE (2) = 17,845 SF
- TOTAL AREA = 21,867 SF

## UNIT TYPES:

- STUDIO UNITS = 02
- 1 BEDROOM UNITS = 03
- 2 BEDROOM UNITS = 01
- 3 BEDROOM UNITS = 06
- TOTAL UNITS = 12

## PARKING COUNTS:

- REQUIRED - 37 SPACES
- PROVIDED - 33 SPACES



**Exhibit B** – Project Area and Legal Description

Aerial Map (1:1,500):



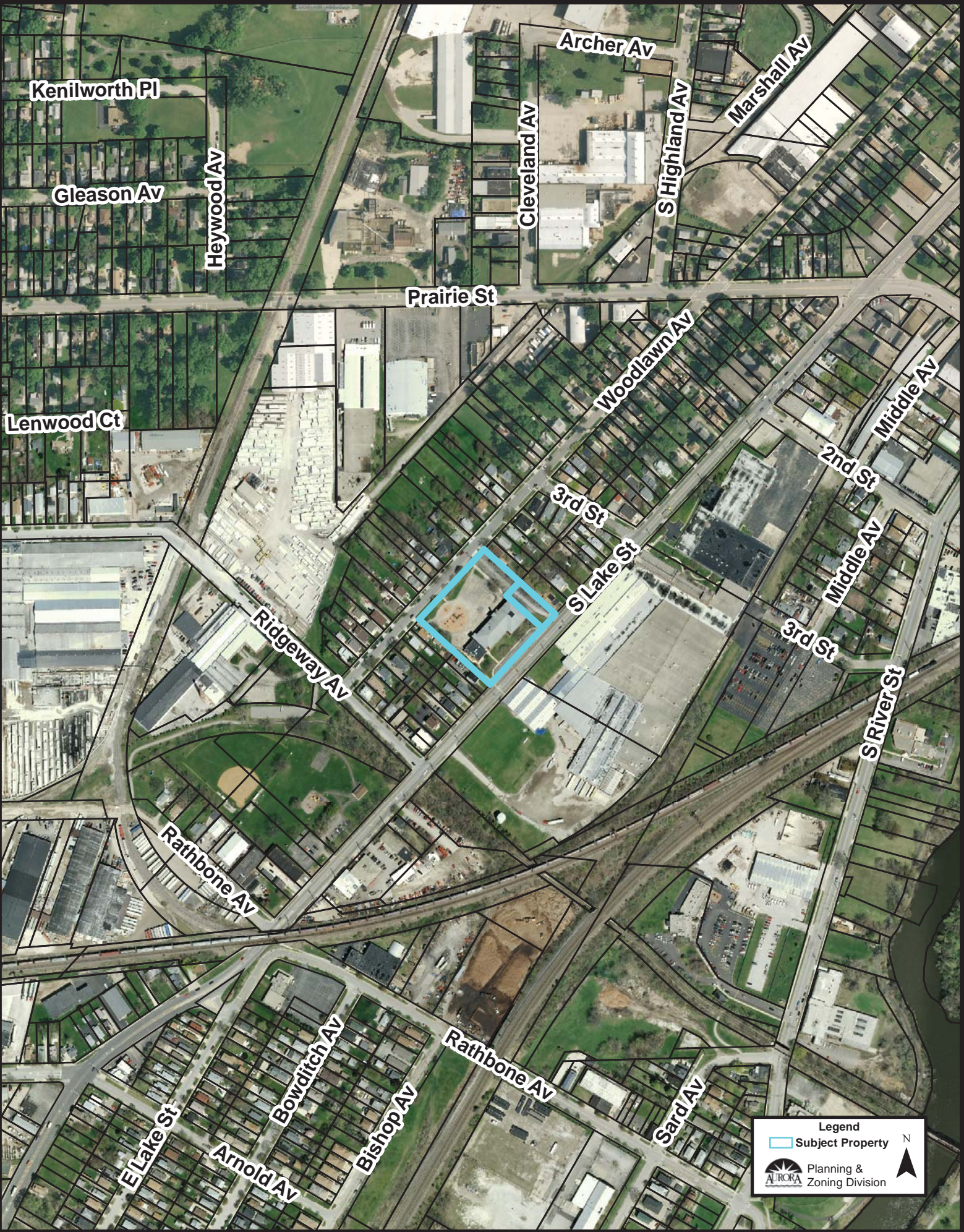
LEGAL DESCRIPTION  
FOX VALLEY APARTMENTS

**PARCEL 1:**

LOTS 1 THROUGH 4 IN BLOCK 8 OF GALE'S ADDITION TO AURORA, IN THE CITY  
OF AURORA, KANE COUNTY ILLINOIS.

100 OAK AVENUE, AURORA – 15-22-159-001

Aerial Photo (1:5,000):



LEGAL DESCRIPTION  
FOX VALLEY APARTMENTS

**PARCEL 1:**

LOTS 1 THROUGH 4 IN BLOCK 8 OF GALE'S ADDITION TO AURORA, IN THE CITY OF AURORA, KANE COUNTY ILLINOIS.

100 OAK AVENUE, AURORA – 15-22-159-001

**PARCEL 2:**

LOTS 5 THROUGH 9 IN BLOCK 2 OF WAGNER'S SECOND ADDITION TO AURORA, IN THE CITY OF AURORA, KANE COUNTY ILLINOIS.

631 S. LAKE STREET, AURORA – 15-28-129-025

641 S. LAKE STREET, AURORA – 15-28-129-008

### **Exhibit C** – Property Standards

1. Those standards set forth in 25 C.F.R. § 700.55 are incorporated herein.
2. Those standards set forth in the City of Aurora Municipal Code regarding the construction, maintenance, and upkeep of residential properties and structures are incorporated herein.
3. The Uniform Physical Conditions Standards (UPCS) set forth in 24 C.F.R. §92.251 in accordance with 24 CFR 5.703 are incorporated herein.

**Exhibit D** – Note

**Exhibit E** – Mortgage

**Exhibit F** – Regulatory and Land Use Restriction Agreement

**Exhibit G** – Equal Employment Certification

**Exhibit H** – Environmental Authority to Use Grant Funds (AUGF)

**Exhibit I** – Priority Interests

[Intentionally Omitted]

**Exhibit J** – Drug Free Workplace Certification

**Exhibit K** – City's Affirmative Marketing Policy

**Exhibit L** – Rehabilitation Plan

**Exhibit M** – Tenant Selection Plan

**Exhibit N** – 2021 Aurora Housing Authority Utility Allowance

**Exhibit O** – Real Estate Sale Contract

**REAL ESTATE SALE CONTRACT**  
("Contract")

1. This Contract shall be subject to the terms and conditions of the "Development Agreement Between The City Of Aurora, Visionary Ventures NFP Corporation And West Aurora School District 129 Relating To The Todd School (100 Oak Avenue) And The Lincoln School (631 South Lake Street) Development Project HOME-2021-02" ("**HOME Agreement**"). To the extent of any conflict between the terms of this Contract and the HOME Agreement, the terms of the HOME Agreement shall control. Capitalized terms shall have the meaning set forth in the Contract and the HOME Agreement.
2. Visionary Ventures NFP Corporation, an Illinois not-for-profit corporation ("**Purchaser**") agrees to purchase at a price of One and No/100 Dollars 1.00 ("**Purchase Price**"), on the terms set forth herein, the properties legally described on Exhibit 1 attached hereto (collectively the "**Property**").
3. The City of Aurora ("**Seller**") agrees to sell the Property, at the Purchase Price and on the terms and the conditions set forth herein, and to convey or cause to be conveyed to Purchaser thereto by recordable Quit Claim Deeds (or Special Warranty Deeds, if required by the Title Company) ("**Deeds**") subject to the Permitted Exceptions, together with the any and all personal property, including fixtures presently located thereon, in relation to which the Seller shall execute and deliver to Purchaser a bill of sale.
4. [Intentionally omitted].
5. Purchaser shall, at Purchaser's sole cost and expense, obtain a current as-built ALTA/ACSM survey ("**Survey**") of the Property, prepared by a registered land surveyor or engineer, licensed in the State of Illinois, prepared in accordance with the Minimum Standard Detail Requirements of a Class A Land Title Survey jointly established by the American Land Title Association and the American Congress on Surveying and Mapping, certified to the Title Company, Purchaser, and any lender of which Seller shall be notified, and in form sufficient to provide ALTA coverage and satisfy all reasonable lender requirements, if applicable. The Survey shall depict and include, without limiting the foregoing: the present location of all improvements or structures on the Property, including all encroachments of any part thereof onto adjoining land and all encroachments of any part of adjoining improvements onto the Property, parking spaces (by location and number), building lines and all easements whether recorded or visible (and, if recorded, by specific reference to recorded document numbers); access to public roads or ways; all above ground utilities servicing the Property; and identification of each Permitted Exception capable of being geographically located, by locating the same on the Survey with reference to recording

information. The Survey must be sufficient to cause the Title Company (as defined below) to delete the standard printed survey exception and to issue the title policy free from any survey objections or exceptions whatsoever, other than the Permitted Exceptions. Within thirty (30) days of receipt of the Survey, Purchaser and Seller shall agree in writing on those Survey exceptions subject to which Purchaser shall take title to the Property.

Upon approval of the Survey by Seller and Purchaser, the legal description in Exhibit 1 shall be automatically revised to be that of the legal description in the Survey and Title Commitment. At either party's request, any changes to the legal description shall be confirmed in writing signed by both parties.

6. The time of closing ("**Closing**") shall be as provided for in Section III.F. of the Home Agreement ("**Closing Date**") or on the date, if any, to which such time is extended by reason of paragraph A of the Conditions and Stipulations hereafter becoming operative (whichever date is later), unless subsequently mutually agreed otherwise, either remotely or at the office of the Title Company mutually agreeable to the Seller and the Purchaser, provided title is shown to be good or is accepted by Purchaser.
7. Each party hereto hereby represents and warrants to the other that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or, through such party's actions (or claiming through such party), is entitled to compensation as a consequence of this transaction. Each party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Contract. Each party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorney's fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder.
8. This Contract is subject to the Conditions and Stipulations set forth on the following pages, which Conditions and Stipulations are made a part of this Contract. To the extent of any conflict between the terms of this Contract, the Conditions and Stipulations, and the HOME Agreement the terms of the HOME Agreement shall control.
9. This Contract shall be deemed dated and become effective as of the date of the HOME Agreement ("**Effective Date**").

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract as of the date next to their respective signature.

**SELLER:**  
**CITY OF AURORA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 202\_\_

**PURCHASER:**  
**Visionary Ventures NFP Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

## CONDITIONS AND STIPULATIONS

- A. Seller shall deliver to Purchaser, at Purchaser's sole cost and expense, a title commitment issued by Chicago Title Insurance Company ("**Title Company**"), with the cost of said title commitment to be shared equally by Seller and Purchaser, in the amount of the Purchase Price, with extended coverage over the standard exceptions 1 through 5, ("**Title Commitment**"), together with copies of all underlying title documents listed in the Title Commitment ("**Underlying Title Documents**"), subject only to (i) covenants, conditions, restrictions and easements of record; (ii) all applicable laws and ordinances affecting the Property, including but not limited to, zoning, subdivision, public health, environmental and building; (iii) public and private easements, recorded and unrecorded for utilities and drainage and other purposes over, under and upon the Property; (iv) the restrictions and reservations, if any, contained in the Deeds, provided that (i), (ii), (iii) and (iv) do not prevent the Purchaser, in Purchaser's reasonable judgment, from being able to proceed with the Project, as defined in the HOME Agreement; (v) 2021 and 202\_ general real estate taxes not yet due and payable and subsequent years; and (vi) acts done or suffered by or judgments against Purchaser (collectively, the "**Permitted Exceptions**"). If the Title Commitment, Underlying Title Documents or the Survey (as defined above) disclose exceptions to title, which are not acceptable to Purchaser, ("**Unpermitted Exceptions**"), Purchaser shall have fourteen (14) days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Purchaser shall provide Seller with a title and survey objection letter ("**Purchaser's Objection Letter**") listing those matters, which are not acceptable to Purchaser. Seller shall have fourteen (14) days from the date of delivery of the Purchaser's Objection Letter ("**Seller's Cure Period**") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions or to cure any Survey Defects, the time of Closing shall be extended fourteen (14) days ("**Extended Title Closing Date**") after Purchaser's receipt of a proforma title policy ("**Proforma Title Policy**") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions or correcting the Survey Defects within the specified time, Purchaser may elect to either (i) terminate this Contract, or (ii) upon notice to Seller within seven (7) days after Purchaser's receipt of Seller's intention not to cure the Unpermitted Exceptions or Survey Defects, to take title as it then is with the right to deduct from the Purchase Price any liens or encumbrances of a definite or ascertainable amount which are listed in the Title Commitment. All Unpermitted Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all

matters insured by the Title Company, subject only to the Permitted Exceptions. If Purchaser does not so elect, this Contract shall become null and void without further action of the parties. Seller also shall furnish Purchaser an affidavit of title in customary form covering the date of closing and showing title in Seller subject only to the Permitted Exceptions and any Unpermitted Exceptions or defects in the title disclosed by the Survey, if any, as to which the title insurer commits to extend insurance in the manner specified in this Paragraph.

- B. General Property taxes, if any, shall be prorated as of the closing date on the basis of the prior year's taxes increased five percent (5%), unless the Seller has obtained an exemption for payment of real estate taxes from the Department of Revenue, in which event, the Purchaser shall be responsible for payment of real estate taxes on the day of Closing through to and including December 31, 202\_ and subsequent years.
- C. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract.
- D. In the event Seller fails to close this transaction in accordance with the terms hereof, the Purchaser may either seek specific performance or terminate its obligations hereunder, and, in the event of termination, all sums paid hereunder by Purchaser to the Seller or to the Title Company shall be refunded to Purchaser without deduction, together with any interest earned thereon.
- E. This sale shall be closed through an escrow with the Title Company, in accordance with the general provisions of the usual form of "Deed and Money Escrow Agreement" then in use by the Title Company, with such special provisions inserted in the escrow agreement as may be required to conform with this Contract. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, payment of the Purchase Price and delivery of the Deeds shall be made through the escrow and this Contract. The cost of the escrow shall be divided equally between Seller and Purchaser.
- F. Time is of the essence of this Contract. If the date of Closing or any date for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the date of Closing or such performance shall be extended to the next business day.
- G. Any and all notices, demands, consents and approvals required under this Contract shall be sent and deemed received: A) on the third business day after mailed by certified or registered mail, postage prepaid, return receipt requested, or B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or Airborne)

for guaranteed next business day delivery, if addressed to the parties as follows:

If to City: City of Aurora  
44 E. Downer Place  
Aurora, Illinois 60507-2067  
Attention: City Mayor

With a copy to: City of Aurora, Law Department  
The Elmslie Building  
1 S. Broadway, 3rd Floor  
Aurora, Illinois, 60507  
Attention: Corporation Counsel

If to Developer: Visionary Ventures NFP Corporation

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to:

Either party hereto may change the name(s) and address(es) of the designee to whom notice shall be sent by giving written notice of such change to the other party hereto in the same manner, as all other notices are required to be delivered hereunder.

- H. The parties acknowledge that as the Seller is a governmental entity, this transaction is exempt from any State, County or local real estate transfer tax pursuant to 35 ILCS 200/31-45(b). Seller is obligated to furnish completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois.
- I. As the Seller is a municipal entity, this Contract is subject to the approval of and is not enforceable until approved at an open meeting by the Mayor and City Council of the Seller.
- J. This Contract shall be deemed dated and become effective on the date that the authorized signatories of Seller shall sign the Contract, which date shall be the date provided next to the Seller's signature.
- K. This Contract and the Exhibit attached hereto and made a part hereof, or required hereby, embody the entire contract between the parties hereto with respect to the Property and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of

any kind whatsoever, shall be made or claimed by Seller or Purchaser, and no notices of any extension, change, modification or amendment made or claimed by Seller or Purchaser (except with respect to permitted unilateral waivers of conditions precedent by Purchaser) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Purchaser.

- L. The following Exhibits are hereby attached hereto and made a part hereof by reference:

Exhibit 1 - Legal Description of Property

Exhibit 2 – Disclosure Form (which shall be completed by the Purchaser)

**Exhibit 1 to Real Estate Sale Contract**

**Legal Description of Property**

**Exhibit 2 to Real Estate Sale Contract**

**Disclosure Form**

State of Illinois        )  
                                  )ss.  
County of Kane        )

**DISCLOSURE AFFIDAVIT**

I, \_\_\_\_\_, ("**Affiant**") reside at \_\_\_\_\_  
\_\_\_\_\_, in \_\_\_\_\_ County, State of \_\_\_\_\_,  
being first duly sworn and having personal knowledge of the matters contained in this  
Affiant, swear to the following:

1. That I am over the age of eighteen and the (choose one)  
[ ] owner or  
[ ] authorized trustee or  
[ ] corporate official or  
[ ] managing agent or  
[ ] \_\_\_\_\_ of the purchaser ("**Purchaser**") of the Real  
Estate (as defined herein).

2. That the Real Estate (as defined herein) being sold to the Purchaser is described  
as: \_\_\_\_\_  
("**Real Estate**").

3. That I understand that, pursuant to 50 ILCS 105/3.1, prior to execution of a real  
estate purchase agreement between the record fee owner of the Real Estate and  
Purchaser, Illinois State Law requires the owner, authorized trustee, corporate official or  
managing agent of Purchaser to submit a sworn affidavit to the seller, the City of Aurora  
("**Seller**"), disclosing the identity of every owner and beneficiary having *any* interest, real  
or personal, in the Real Estate, and every shareholder entitled to receive more than  
7½% of the total distributable income of any corporation having any interest, real or  
personal, in Purchaser.

4. As the [ ] owner or  
[ ] authorized trustee or  
[ ] corporate official or  
[ ] managing agent or  
[ ] \_\_\_\_\_ of the Purchaser, I declare under oath  
that (choose one):

[ ] The owners or beneficiaries of the trust are: \_\_\_\_\_  
\_\_\_\_\_ or

[ ] The shareholders with more than 7 1/2% interest are: \_\_\_\_\_  
\_\_\_\_\_ or

[ ] The corporation is publicly traded and there is no readily  
known individual having greater than a 7½% interest in the corporation.

This Disclosure Affidavit is made to induce the Seller to convey title to the Real Estate in accordance with 50 ILCS 105/3.1.

AFFIANT

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**SUBSCRIBED AND SWORN** to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
NOTARY PUBLIC