



CITY OF AURORA, ILLINOIS

RESOLUTION NO. R17-366
DATE OF PASSAGE November 14, 2017

A Resolution Authorizing the Execution of a Development Agreement with Aurora Revitalization Owner LLC for the Properties Located at 5 E. Galena Boulevard; 2-20 South Stolp Avenue; and 104 E. Downer Place - Aurora Arts Centre Residential Project.

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, the Mayor and City Council of the City of Aurora, Kane, Kendall, Will, and DuPage Counties, Illinois ("Mayor and City Council"), constituting the corporate authorities thereof, have considered a development agreement (the "Development Agreement"), a substantially complete draft of which is attached hereto and made a part hereof as Exhibit 1, between the City of Aurora and Aurora Revitalization Owner LLC ("Developer"), relative to the residential portions of the Aurora Arts Centre Project, which concerns property located at 5 East Galena Boulevard; 2-20 South Stolp Avenue; and 104 E. Downer Place, Aurora, Illinois (together, the "Property"); and

WHEREAS, the Development Agreement contemplates a bridge loan by the City to the Developer of up to Six Hundred Thousand and No/100 Dollars (\$600,000.00); and

WHEREAS, the Development Agreement contains a clause that acknowledges that "the City anticipates using HOME Funds ("HOME Funds") to assist the Project in the future, and, if and when such HOME Funds become available, the City anticipates loaning such HOME Funds to the Developer so it can repay the loan of City Funds described herein;" and

WHEREAS, the Development Agreement further provides that "the City will not be required to disburse City Funds hereunder until March 1, 2018;" and

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WHEREAS, the City of Aurora previously received an "Authority to Use Grant Funds" from the U.S. Department of Housing and Urban Development (HUD) to provide Six Hundred Thousand and No/100 Dollars (\$600,000.00) in federally provided HOME funds (hereafter "HOME funds"), to be used in furtherance of the rehabilitation and development of the residential portions of the Aurora Arts Centre project, but has been instructed by HUD that such funds may not be formally committed to the project prior to January 28, 2018 at which point the current "period of affordability" in place at the property at 104 East Downer Place will expire; and

WHEREAS, Mayor and City Council have previously approved the allocation of the HOME funds subject to the repayment and other terms and conditions as set forth in the Development Agreement authorized by City Council Resolution R16 – 385 passed on December 13, 2016, and such HOME funds have already been set aside and reserved by the Neighborhood Redevelopment Division of the City of Aurora for this very purpose; and

WHEREAS, the City therefore intends to provide the HOME funds in accordance with both City Council's authorization and HUD's approval so that such HOME funds shall be provided after January 28, 2018 but prior to March 1, 2018 which would negate the obligation for the City to provide the "bridge" loan of Six Hundred Thousand and No/100 Dollars (\$600,000.00) that is contemplated in Development Agreement attached hereto as Exhibit 1; and

WHEREAS, the attached Development Agreement (Exhibit 1) is nevertheless needed so that the City's funding commitment of Six Hundred Thousand and No/100 Dollars (\$600,000.00) can be evidenced at the financial closing of the Aurora Arts Center Residential Project scheduled for December 1, 2017, while still complying with the instructions from HUD not to formally commit the HOME funds until after January 28, 2018;

WHEREAS, the Mayor and City Council have determined that it is in the best interests of the residents of the City of Aurora that the Development Agreement be entered into by the City of Aurora, and further, that but for the provision for incentives as provided therein, the property would not otherwise be developed as provided therein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows:

Section 1: The Recitals hereto set forth above are hereby made a part and are operative provisions of this Resolution as fully as if completely repeated at length herein.

Section 2: The Mayor and City Council hereby find that it is in the best interests of the City of Aurora and its residents that the aforesaid Development

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Agreement with Aurora Revitalization Owner LLC be entered into by the City of Aurora, with said Development Agreement to be substantially in the form attached hereto and made a part hereof as EXHIBIT 1. Any additional edits, revisions or amendments to the Development Agreement subsequent to this approval are subject to the approval of the Mayor in consultation with counsel, so long as the contemplated uses of the funds loaned to Developer in furtherance of the residential portions of the Aurora Arts Centre Project remains the same, and the amount of funds provided does not exceed Six Hundred Thousand and No/100 Dollars (\$600,000.00).

Section 3: The Mayor and City Clerk of the City of Aurora, are hereby authorized to execute for and on behalf of said City of Aurora, the aforesaid Development Agreement and all other documents contemplated thereunder necessary to facilitate the Development Agreement and loan of Funds to Developer of up to Six Hundred Thousand and No/100 (\$600,000) for the uses specified.

Section 4: This Resolution shall take effect from and after its adoption and approval as required by law.

RESOLUTION NO. R17-306
DATE OF PASSAGE November 14, 2017

PASSED AND APPROVED ON November 14, 2017

AYES 9 NAYS 0 NOT VOTING 0 ABSENT 2

Kristina Bohman
Alderman Bohman, Ward 1

Paul Franco
Alderman Mesiacos, Ward 3

Alderman Franco, Ward 5

Alderman Hart-Burns, Ward 7

Alderman Bugg
Alderman Bugg, Ward 9

Alderman Jenkins
Alderman Jenkins, At Large

Alderman Garza, Ward 2

W. I. Snell
Alderman Donnell, Ward 4

Michael Saville
Alderman Saville, Ward 6

Alderman Mervine
Alderman Mervine, Ward 8

Judd Lofchie
Alderman Lofchie, Ward 10

Alderman O'Connor
Alderman O'Connor, At Large

ATTEST:
Wendy McCambridge
City Clerk

Richard C. Li
Mayor

17-01026

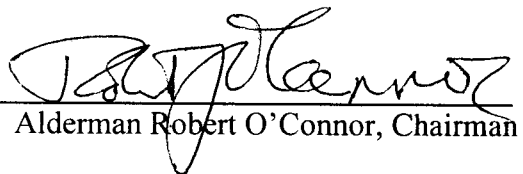
RECOMMENDATION

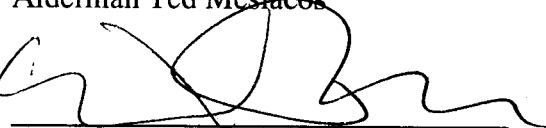
TO: THE COMMITTEE OF THE WHOLE

FROM: THE FINANCE COMMITTEE

The Finance Committee at the special meeting on Tuesday, November 7, 2017 Recommended **APPROVAL** of A Resolution Authorizing the Execution of a Development Agreement with Aurora Revitalization Owner LLC for the Properties Located at 5 E. Galena Boulevard; 2-20 South Stolp Avenue; and 104 E. Downer Place - Aurora Arts Centre Residential Project.

The Vote 2-0

Submitted By 
Alderman Robert O'Connor, Chairman

Alderman Ted Mesiacos


Alderman Edward Bugg

Alderman Rick Mervine, alternate

Dated this 7th day of November, 2017

EXHIBIT 1

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF AURORA AND AURORA REVITALIZATION OWNER LLC

This Development Agreement ("Agreement") is entered into as of the _____ day of _____, 2017 ("Effective Date"), by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation ("City"), and Aurora Revitalization Owner LLC, an Illinois limited liability company ("Developer"). (The City and the Developer are sometimes referred to herein individually as a "Party" or collectively as the "Parties").

RECITALS

WHEREAS, the City has a population of more than 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 City has the following sources of funds, in the aggregate amount of \$600,000, available for use in financing the Project (as defined below): [insert sources of City funds] ("City Funds"); and

WHEREAS, the Developer (directly or through affiliated entities) desires to undertake the following development activities within the City: (i) acquisition, rehabilitation and development of the four story, approximately 83,000 square foot building located at 5 East Galena Boulevard and 2-20 South Stolp Avenue, Aurora, Illinois (the "Aurora Arts Centre") into a mixed-use project consisting of (A) approximately 35,000 square feet of commercial/residential space located on the bottom two floors of the Aurora Arts Centre, which will include a restaurant space, rehearsal and support spaces for the Paramount Theater, a performing arts academy, and four residential apartments (the "Aurora Arts Centre Commercial Project") and (B) approximately 48,000 square feet located on a portion of the street level and the upper two floors of the Aurora Arts Centre which will be used for 38 units of affordable rental housing (the "Aurora Arts Centre Residential Project") (the Aurora Arts Centre Commercial Project and the Aurora Arts Centre Residential Project are collectively referred to herein as the "Aurora Arts Centre Project"); and (ii) acquisition and rehabilitation and development of the existing 38-unit Coulter Court Residences rental apartment building located at 104 East Downer Place and 32-34 Broadway, Aurora, Illinois, and a nearby site which is used for parking (the "Coulter Court Project"). The Aurora Arts

Centre Residential Project and the Coulter Court Project are collectively referred to herein as the “Rental Housing Projects” or the “Project”); and

WHEREAS, the land on which the Aurora Arts Centre is located is legally described on Exhibit A-1 attached hereto and made a part hereof (the “Aurora Arts Centre Property”), and the land on the which the Coulter Court Project is located is legally described on Exhibit A-2 attached hereto and made a part hereof (the “Coulter Property” and the Aurora Arts Centre Property and the Coulter Property are collectively referred to herein as the “Property”), and references herein to the “Property” or “Project Property” shall also be deemed to be references to the applicable component of the Project; and

WHEREAS, a condominium ownership structure has been established for the Aurora Arts Centre, creating two condominium units, one of which is the portion of the Aurora Arts Centre in which the Aurora Arts Centre Residential Project will be located (the “AAC Residential Condo”), and one of which is the portion of the Aurora Arts Centre in which the Aurora Arts Centre Commercial Project will be located (the “AAC Commercial Condo”); the two condominium units in the Aurora Arts Centre are owned as follows: (i) the AAC Residential Condo is owned by the Developer, and (ii) the AAC Commercial Condo is currently owned by the Commercial Developer (defined below), which has transferred, or on the date hereof will be transferring, such unit to Aurora Arts Centre QALICB LLC; and

WHEREAS, the Coulter Court Project is currently owned by Coulter Court Limited Partnership, an Illinois limited partnership, and Joseph Corporation, an Illinois not for profit corporation (collectively, the “Coulter Seller”), and Aurora Revitalization Residential LLC (“ARLLC”), as assignee of The Community Builders, Inc. (“TCB”), has entered into separate purchase options with the Coulter Seller (the “Coulter Purchase Option”) for the purchase of the Coulter Court Project; and

WHEREAS, ARLLC has entered into a purchase contract (or purchase option) with the Developer pursuant to which ARLLC will transfer to the Developer the Coulter Court Project; and

WHEREAS, the City, Aurora Metropolitan Exposition, Auditorium and Office Building Authority (“ACCA”), and Aurora Arts Center Developer LLC (an affiliate of the Developer) (the “Commercial Developer”) have entered into a separate Amended and Restated Development Agreement dated as of May 9, 2017 (the “Commercial Development Agreement”) regarding the development of the Aurora Arts Centre Commercial Project; and

WHEREAS, the Parties also agree that the Developer is working with third parties (the proposed general contractor, the architect and proposed investors and lenders) to finalize the Rental Housing Projects budget and secure sufficient financing sources for the Rental Housing Projects, and that the commitment of funds by the City hereunder will be used by the Developer to help evidence funding commitments for the Rental Housing Projects in order to secure additional financing;

WHEREAS, the City desires to facilitate the rehabilitation and operation of the

Aurora Arts Centre Residential Project and the Coulter Court Project in accordance with the terms of this Agreement, by loaning the City Funds to the Developer to assist in the financing of such projects; and

WHEREAS, the City anticipates using HOME Funds (“HOME Funds”) to assist the Project in the future, and, if and when such HOME Funds become available, the City anticipates loaning such HOME Funds to the Developer so it can repay the loan of City Funds described herein.

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 Mayor or Chief Community Services Officer, 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. The 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 William Woodley, and Terri Hamilton Brown, 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-1 – Legal Description – Aurora Arts Centre;
Exhibit A-2 – Legal Description – Coulter Court
Exhibit B – Property Standards;
Exhibit C – Note;
Exhibit D – Mortgage
Exhibit E – Regulatory and Land Use Restriction Agreement;
Exhibit F – Equal Employment Certification;
Exhibit G – [Intentionally Omitted]
Exhibit H – Priority Interests;
Exhibit I – Drug Free Workplace Certification;
Exhibit J – City's Affirmative Marketing Policy;
Exhibit K – Investor Loan Rider

II. OBLIGATIONS.

A. Developer's Obligations and Commitments.

The 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. For any obligation of the Developer set forth herein, the Developer or an affiliate of the Developer may meet the requirements set forth herein instead of the Developer.

1. **Proof of Financing. City Funds.** Prior to the execution of this Agreement and receipt of any City funds from the City ("City Funds Financing Deadline"), the Developer will submit to the City to the City executed letters of intent, and/or executed term sheets, from the lenders listed on Exhibit H and U.S. Bank National Association, Developer's tax credit investor, evidencing firm financial lending commitments to the Developer (or any of its affiliates) for the Rental Housing Projects which establish that the Developer has or will have adequate financial and economic resources available to implement and complete Developer's obligations set forth in this Agreement with respect to the Rental Housing Projects ("Rental Project Financing Commitments"). If at the time of Closing the Aurora Arts Centre Commercial Project is not also ready to close, then the Rental Project Financing Commitments will need to include evidence that there will be sufficient financing for the Project even if the Aurora Arts Centre Commercial Project does not close.

2. **Rehabilitation/Construction of the Property; Ongoing Operations.**

The Developer shall:

- a. With respect to the Rental Housing Projects, commence rehabilitation within 12 months of March 15, 2017, which is the date of the reservation letter between the Developer and the Illinois Housing Development Authority ("IHDA") regarding low income housing tax credits to finance the Rental Housing Projects (the "Tax Credit Reservation Date"); the parties acknowledge that this condition will be satisfied if rehabilitation commences on either the Aurora Arts Centre Residential Project or the Coulter Court Project.
- b. With respect to the Rental Housing Projects, within eleven (11) months after the Tax Credit Reservation Date ("Rehabilitation Plan Deadline"), submit a proposed Rehabilitation Plan for the Rental Housing Projects ("Rehabilitation Plan") to the City. The Rehabilitation Plan and the rehabilitation/construction of the Project shall meet or exceed the property standards and building code standards set forth in **Exhibit B**. The City shall review each Rehabilitation Plan and any modifications submitted by the Developer in accordance with such standards and provide a response as set forth in Subsection II.A.14.

- c. With respect to the Rental Housing Projects, the Developer shall complete rehabilitation in accordance with the Rehabilitation Plan, and receive a certificate of occupancy from the City for the Rental Housing Projects (or, for the Coulter Court Project, receive other evidence of completion), on or before eighteen (18) months after commencement.
- d. While it is the collective intent of the Parties to develop the Rental Housing Projects and the Aurora Arts Centre Commercial Project simultaneously, the Developer and the City acknowledge and agree that the Rental Housing Projects and Aurora Arts Centre Commercial Project may be developed independently; the development of the Rental Housing Projects is not a condition of the City's and the Commercial Developer's obligations under the Commercial Development Agreement with respect to the Aurora Arts Centre Commercial Project, and the development of the Aurora Arts Centre Commercial Project is not a condition to the City's and the Developer's obligations hereunder with respect to the Rental Housing Projects.
- e. The Developer's obligations hereunder with respect to the Rental Housing Projects are subject to the receipt by Developer of sufficient financing sources (in the determination of the Developer) for the Project, including evidence that there will be sufficient financing for the Project even if the Aurora Arts Centre Commercial Project does not close.
- f. Notwithstanding any other provision of this Agreement, neither TCB, ARLLC nor the Developer shall have any obligation to purchase the the Coulter Court Project, or provide a loan of federal funds to finance the Project, or receive City Funds which are federal funds, and no transfer of title to such property to, or funding to (or from), either entity may occur, unless the applicable governmental authority has provided Developer, ARLLC and TCB (as applicable) with a written notification (the "Environmental Review Notice") that (i) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other contingencies in the Coulter Purchase Option, (1) the purchase may proceed, or (2) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (ii) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required.

3. Closing Timing and Closing Documents. For the Rental Housing Projects, the Developer will provide the City with at least 30 days' written notice of its intent to close on the financing for the Project (the "Closing Notice"). The date of closing for the financing of the Project is the "Closing". The parties acknowledge that, prior to the Closing, the AAC Residential Closing may occur. Prior to the

Closing Notice, the Developer will provide the City with at least 30 days' written notice of the date on which the relevant parties will engage counsel and begin reviewing and preparing the Residential Closing Documents (defined below). The Developer may provide one Closing Notice for the Rental Housing Projects and a separate notice for the Aurora Arts Centre Commercial Project. On the Closing Date for the Project, the Developer and the City will execute documents and provide funds as set forth herein. For the Rental Housing Projects, the documents to be executed by the Developer and other entities (collectively, the "Residential Closing Documents") will reflect terms consistent with the Residential Project Financing Commitments (with any changes approved by the City and the Developer), and shall be subject to the prior review and approval, and the commercially reasonable comments, of each Party, its counsel, and the investor and lenders for the Project. The documents to be executed by the Developer are more specifically described below:

- a. The Developer will execute and deliver to the City a mortgage attached as **Exhibit D** ("Mortgage"), with such changes thereto as approved by the City to conform the Mortgage to the terms of this Agreement.
- b. The Developer will execute and deliver to the City the note attached as **Exhibit C** ("Note"), with such changes thereto as approved and/or required by the City to conform the Note to the terms of this Agreement.
- c. The Developer will execute a regulatory agreement attached as **Exhibit E** ("Regulatory Agreement"), with such changes thereto as approved by the City to conform the Regulatory Agreement to the terms of this Agreement.
- d. Simultaneous with taking title to the Coulter Court Project, the Developer will record against title, 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 applicable Property, as evidenced by a certificate of occupancy (or, for the Coulter Court Project, other evidence of completion), have all dwelling units in the applicable Property inhabited by eligible tenants, as eligibility is set forth in Section 3(a) of the executed and recorded Regulatory Agreement for the applicable Property. Preference in the selection of residents to occupy a unit in the Aurora Arts Centre Residential Project shall be given to working households involved in artistic activities, to the extent permitted by law.

4. **Payment Requirements.** When submitting a Payment Request to the City for eligible rehabilitation/construction costs which the 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 the Developer to an amount at least equal to the requested amount for purposes of rehabilitation of the Property (or evidence that the Developer has incurred such costs), (4) paid receipts and/or invoices for rehabilitation/construction costs submitted for the Property, (5) such additional information 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 any such certification is 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 applicable 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.

The City shall thereafter review and process the Payment Request as set forth in Subsection II.A.6.

5. Ongoing Affordability Requirement. With respect to the Coulter Court Project, for forty (40) years from the date (as set forth in the Note) that the twelve (12) units financed by the City hereunder (the "Funded Units") are available for rent and placed in service ("PIS Date") ("Affordability Term"), Developer shall limit occupancy of these number of units on the applicable Property as follows: (A) for [three] of the Funded Units, limit to occupants with initial incomes at or below Thirty Percent (30%) of the Chicago-Joliet-Naperville Area Median Income, and (B) for the remaining [nine] Funded Units, limit to occupants with initial incomes at or below Fifty Percent (50%) of the Chicago-Joliet-Naperville Area Median Income; provided, however, that, at any time after twenty (20) years from the PIS Date, if: (i) the affordability restrictions under the Low-Income Housing Extended Use Agreement between IHDA and the Developer ("Extended Use") terminate, and (ii) the Developer is no longer receiving a "Project Based Section 8" subsidy ("Rental Subsidy"), then the Developer shall provide the City with written notice of the occurrence of these two (2) conditions, and upon concurrence by the City with the determination that these two (2) conditions have been met, the Affordability Term shall terminate at the date agreed upon by the City and the Developer,

which in no event shall be less than twenty (20) years from the PIS Date (and no more than 40 years from the PIS Date), subject to the right of the senior lenders to foreclose. The Affordability Term also will terminate upon foreclosure or a deed in lieu thereof. The twelve Funded Units will be located at the Coulter Court Project, and will be floating units.

6. Repayment. The Developer shall repay the City the amount of the Project Commitment paid by the City to the Developer pursuant to this Agreement (“Paid Commitment”) as follows:

- a. Should the designated number of Funded Units not be occupied within twelve (12) months from the PIS Date, a marketing plan, at the Developer’s cost, shall be submitted to the City.
- b. Should the designated number of Funded Units never have been leased within eighteen months of receiving a certificate of occupancy (or, for Coulter Court, after completion of the rehabilitation work), after the expiration of any notice and cure period under Section VII below), repayment of the Paid Commitment by the Developer to the City shall be made by the Developer.
- c. The Developer shall repay the City the Paid Commitment by a balloon payment to be made not less than forty (40) years from the PIS Date (“Repayment Term”), on the terms set forth in the Note.
- d. The Paid Commitment shall be a non-amortizing loan and shall not require annual payments.
- e. The Paid Commitment shall earn interest in favor of the City at a rate equal to [three percent (3.0%)] at the time of Closing.
- f. The Paid Commitment may be prepaid at any time with no prepayment penalty, including a prepayment made with the HOME Funds.

7. Further Assistance and Corrective Instruments.

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

- b. The 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, in all cases consistent with the Residential Closing Documents.

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

9. Limitations on Reimbursement.

- a. The Developer shall be solely responsible for the costs of rehabilitation/construction of the Rental Housing Projects above the Paid Commitment. The Developer shall be solely responsible for the costs of rehabilitation and operation of the Rental Housing Projects.
- b. The Paid Commitment shall not exceed the Project Commitment (defined below).

10. Local Employment Preference. The Developer shall make reasonable efforts to utilize the services of local consultants, contractors, and vendors to rehabilitate, construct and operate the Rental Housing Projects.

11. Continuity of Corporation. The 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 limited liability company 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.

12. Insurance. For the purpose of this paragraph, the term subcontractor includes the general contractor engaged by the Developer to construct the Project, and the insurance requirements may be met by the Developer, a Developer affiliate, or a subcontractor. The 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. The Commercial Developer and the Developer will obtain separate insurance for the Aurora Arts Centre Commercial Project and the Rental Housing Projects (except as permitted below). The Developer shall not commence work under this 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. The Developer shall require that any and all subcontractors, which are not protected under the Developer's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Developer. The 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, the 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. The Developer may, at its option, obtain property insurance for the Aurora Arts Centre as a whole, with the Developer and the Commercial Developer each named as an insured party.

- a. For fire and casualty insurance, coverages in an amount no less than the estimated fair market value of the Rental Housing Projects upon completion of the Rental Housing Projects, and with sufficient business interruption coverage.
- b. Commercial General Liability Insurance, written on an occurrence form, including but not limited to premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury and advertising injury and liability assumed under an insured contract, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate and products/completed operations aggregate of \$2,000,000.
- c. Excess Liability (Umbrella) Insurance with a minimum limit of \$4,000,000 per occurrence and \$4,000,000 annual aggregate. This policy will be in excess of the General Liability, follow the form or at least as broad in coverage.

The City, and its elected officials, officers, agents, and employees ("Additional Insured") shall be additional insureds on all policies set forth in this Subsection II.A.10. 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 Rental Housing Projects.

13. Equal Opportunity Employment. The Developer shall comply with all equal opportunity laws. Simultaneous with execution of this Agreement, the Developer shall execute **Exhibit F** hereto, and shall comply with the conditions set forth on **Exhibit F**. The Developer shall further, should Developer find it necessary to hire additional employees to carry out the Rental Housing Projects, 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.

14. Rehabilitation and Maintenance of Property. The Developer shall rehabilitate the Rental Housing Projects, and at all times maintain and operate the Rental Housing Projects to a 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 any other Property Guidelines in **Exhibit B**. The Developer shall professionally maintain and manage the Rental Housing Projects and Property in accordance with the standard for similarly sized market-rate properties in the greater Aurora region.

15. Housing Choice Voucher Eligibility. The Developer shall ensure that the Rental Housing Projects meet all eligibility standards for project based vouchers supplied by the Aurora Housing Authority pursuant to Section 8 of the United States Housing Act, 42 U.S.C. 1437f, *et seq.*, and the Developer shall comply with such standards in the event the standards are amended from time to time.

16. Compliance. The Developer shall at all times acquire, construct, operate and maintain the Rental Housing Projects in substantial conformance with all applicable Federal, State, and City laws, rules, ordinances and regulations. All work with respect to the Rental Housing Projects 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. The Developer shall require such compliance and assurances in all lower tier contracts and subcontracts associated with this Agreement. The 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. The Developer shall comply with applicable portions of 24 C.F.R. Part 84, except the 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 OMB Circular A-122, "Cost Principles for Non-profit Organizations" to the extent they apply to Developer. This Circular establishes principles for determining allowable costs. Although acting as a developer, Developer must comply with OMB Circular A-133 "Audit Requirements." For any year that Developer expends more than Five Hundred Thousand and No/100 Dollars (\$500,000.00) 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. The 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 limited liability company which is duly organized and existing under the laws of 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. The 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 the 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, to Developer's knowledge, any of its partners or venturers is now a party or by which Developer or any of its related parties or, to Developer's knowledge, 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, to Developer's knowledge, any of its partners or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or, to Developer's knowledge, any of its partners or venturers is now a party or by which Developer, any related party, or, to Developer's knowledge, 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. In reliance on the Rental Project Financing Commitments, Developer has (or will have) 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.

III. City's Obligations and Commitments.

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 seven (7) days of the Effective Date, and so long as the Developer is in compliance with each and every term of this Agreement, set aside and commit the City Funds for the Project, subject to the terms of this Agreement. However, the City will not be required to disburse City Funds hereunder until March 1, 2018.

The Developer understands and acknowledges that the Project Commitment is to be used by the Developer for the rehabilitation/construction of low-income rental housing; and that the funds are administered by the City. Accordingly, it is agreed that the City's obligations to provide funds for the Project are expressly conditioned upon the 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.

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 Rental Housing Projects, and the attachments thereto, and determine whether the Rehabilitation Plan for the Rental Housing Projects, and the attachments thereto, meet the requirements of this Agreement.
- b. If the Rehabilitation Plan for the Rental Housing Projects, or the attachments thereto, do not meet the requirements of this Agreement for any reason, the City must notify the Developer in writing of the deficiencies in the Rehabilitation Plan for the Rental Housing Project, the attachments thereto, and permit the Developer to submit an amended Rehabilitation Plan that meets the requirements of this Agreement within thirty (30) days of the City giving notice of the deficiencies.

2. The City shall, within seven (7) 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, 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. 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, deposit the Disbursement Amount into the construction escrow established at a title company for the Rental Housing Projects, and issue the 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 shall be a loan to the Developer subject to the repayment obligations of the Developer in this Agreement.
- d. If the Payment Request, or the attachments thereto, do not meet the requirements of this Agreement for any reason, notify the Developer in writing of the deficiencies in the Payment Request, or the attachments thereto, and permit the Developer to submit an amended Payment Plan (for each request) for the Rental Housing Projects that meets the requirements of this Agreement within an additional ten (10) days of the City giving notice of the deficiencies.

C. Payments to Developer. The City's obligation to pay the 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 the 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 the Developer the Project Commitment is conditioned on the compliance by Developer with the terms of this Agreement at the time the 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 H 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 the Developer in the event the Developer refinances its debt relative to the Rental Housing Projects, or in the event the Developer obtains additional debt financing after the Effective Date relative to the Rental Housing Projects. The Developer shall notify the City in writing if the Developer seeks to refinance its debt relative to the Rental Housing Projects, within thirty (30) days of the Developer submitting an application to refinance its debt relative to the Rental Housing Projects.

2.Right of First Refusal. Beginning on the twentieth (20) year after the PIS Date and through the Affordability Term, the City shall have a purchase option and the right of first refusal to purchase the Aurora Arts Centre Residential Project or the Coulter Court Project, on the following terms.

- a. If the Developer desires to sell all or part of the Rental Housing Projects (the property being sold is the “Offered Property”), the Developer shall first offer such Offered Property to the City (in accordance with the process described in subsections (b) and (c) below), who shall have the right to purchase the Offered Property pursuant to the terms of said offer. In the event that the City does not purchase the Offered Property pursuant to such right, and the Developer obtains an offer from a third party to purchase the Offered Property for less than Ninety Percent (90%) of the price offered to the City, then the City shall have the right to purchase the Offered Property for the price agreed to with said third party.
- b. If the Developer desires to sell the Offered Property and receives from a third party a good faith written purchase offer for the Offered Property, the Developer agrees to disclose the terms of the offer to the City, in writing, within five (5) days of receipt.
- c. The City shall then have twenty (20) days after receiving notice of the offer to elect to purchase the Offered Property on terms identical to those offered by the third party. Election must be made by written notice to the Developer, and within thirty (30) days thereafter, the City and Developer shall enter into a formal sale contract expressly including all terms of the original offer made to the Developer, except as the parties may agree.
- d. If the City fails to give the notice as provided in Subsection III.D.2.c.,

the Developer shall be relieved of all liability to the City with regard to its right of first refusal herein, and may dispose of the Offered Property as the Developer sees fit, in accordance with the terms of this Agreement.

- e. Within thirty (30) days of the City's exercise of the right to purchase, the Developer shall obtain evidence of marketable title to the Offered Property and submit it to the City for examination. The City shall then have ten (10) days to notify the Developer of any objections to the title and the Developer shall have the opportunity to remedy any defects or objections within thirty (30) days thereafter. If, by the end of the last period, the 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 Offered Property between the Parties entered into pursuant to this Subsection.
- f. The purchase option and the right of first refusal created in this Section III.D.2 is and shall be subordinate to any senior construction or permanent mortgage referenced in **Exhibit H**. In addition, the purchase option and right of first refusal created in this Section III.D. shall be subordinate to the rights granted to the Developer (or to TCB or any other affiliate) under any Purchase Option and Right of First Refusal Agreement between the Developer and such grantee, and any exercise of rights under that agreement will not trigger the rights of the City hereunder; upon the exercise of such rights by the Developer (or TCB or an affiliate), the purchase option and right of first refusal granted hereunder to the City shall terminate.

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.

IV. OTHER PROJECT REQUIREMENTS.

In addition to the Developer's obligation to perform this Agreement in accordance with all Federal, State, and City laws, ordinances, and regulations:

- A. **Federal Law.** The Rental Housing Projects and this Agreement shall be conducted and administered by the 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 the 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; and
 8. The Age Discrimination Act of 1975, 42 U.S.C. § 6101, *et seq.*, and implementing regulations in 24 CFR Part 146.
- B. **No Discrimination.** The Rental Housing Projects shall be conducted and administered by the 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.** The 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 Rental Housing Projects.

- E. **No Unnecessary Purchases.** The Developer shall not purchase unnecessary items with the Project Commitment, as set forth in 24 C.F.R. § 84.44.

- F. **[Intentionally omitted]**

- 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 the City Funds, 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 a City Funds-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to an City Funds-assisted activity, or with respect to the proceeds of the City Funds-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 the Developer.

- H. **No Prohibited Political Activities.** The Developer agrees that to the best of its knowledge, neither the Rental Housing Projects nor the personnel employed by the 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.** The 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 the 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 the Developer in this Agreement are a material representation of fact upon which reliance was placed when this transaction was made or entered into. The 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.** The 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 the Developer shall, simultaneous with execution of this Agreement, execute the drug free workplace certification attached hereto as **Exhibit I** and made a part hereof.

VI.RECORDS, REPORTS, AND NOTICES.

- A. **Inspection.** The Developer authorizes the City, HUD, and the Comptroller General of the United States to conduct on-site reviews, to examine, inspect, and audit the 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 Rental Housing Projects at any reasonable time.
- B. **Annual Reports.** The 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.
- C. **Notification of Sale.**
1. The Developer shall give the City notice at least thirty (30) days before any managing member interest in the Developer or the entity managing the Rental Housing Projects, is sold or transferred.
 2. Neither the withdrawal, removal, replacement, and/or addition of the managing member of the Developer pursuant to the terms of the Amended and Restated Operating Agreement of the Developer, nor the withdrawal, replacement, and/or addition of any of the investor member of the Developer (or the partners or members of an investor member), shall alone

constitute a default under this Agreement, and any such actions shall not alone accelerate the maturity of the Paid Commitment.

- D. **Production of Documents.** At the request of the City, the 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 the Developer shall give specific answers to questions from the City, from time to time, relative to the Rental Housing Projects.
- E. **Audit.** The Developer shall, each year as long as the Rental Housing Projects remains in effect, complete an audit of the Rental Housing Projects, 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.** The Developer shall submit to the City all required information to show compliance with applicable Federal, State, and City laws, rules and regulations with respect to the Rental Housing Projects, 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 J**;
 2. A copy of the 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 (if any); and
 4. The Developer shall provide a progress report ("Progress Report") to the City by the fifth (5) day of each month, reporting on the status of the Rental Housing Projects. The Developer shall provide Progress Reports after the Effective Date, and shall continue to provide such Progress Reports throughout the construction period.
- 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 Rental Housing Projects are complete: documentation of all activities undertaken in connection with Developer's marketing plan.

2. For as long as Developer owns the Rental Housing Property and for five (5) years thereafter: all financial records pertaining to the rehabilitation, construction, and maintenance of the Rental Housing Project during the time they were owned by the Developer.
 3. If any litigation, claim, negotiation, audit or other action involving the records described in items 1 and 2 above 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. The 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. § 29.504(c)(2)(iii).

VII. SUSPENSION AND TERMINATION; REVERSION OF ASSETS.

- A. **Suspension or Termination for Material Failure.** Any Party may suspend or terminate this Agreement if the other Party 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.** Any Party may terminate this Agreement for the other Party's breach of the Agreement in any material respect, abandonment of the Rental Housing Projects, or occurrence rendering impossible the performance by a Party of its obligations under this Agreement.
- C. **Notice of Termination.** In the event a Party elects to suspend and/or terminate this Agreement, for any reason stated in Subsection VII.A., and/or Subsection VII.B., or pursue another remedy hereunder, the Party electing to terminate or suspend (or pursue another remedy) shall notify the other Party in writing of such action, specifying the particular deficiency. The Party who is alleged to be in breach 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 Party giving the deficiency notice under this Agreement, and if the default is one that cannot reasonably be expected to be cured in thirty (30) days, the Party affecting a cure shall have an additional time period (not to exceed sixty (60) days) to cure as long as it is diligently pursuing a cure.

- D. **Reversion of Assets.** Upon termination of this Agreement, the Developer shall immediately-refund any unspent Project Commitment received by the Developer from the City, within thirty (30) days of the date of termination.

VIII. REMEDIES.

- A. **[Intentionally Omitted]**
- 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 the Developer shall immediately notify the other Party, in writing, providing the full details of the alleged violation. The 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 the Developer and the Federal agency, the 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 .A. and/or B. above, and if the City is not subject to loss of any Federal funding, the 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 Rental Housing Projects, as a result of any violation by Developer subject to the remedy provisions in this Section, the Developer shall repay, upon demand by the City, such amount of funding due, as a result of the breach.
- E. **Indemnification and Hold Harmless.** To the fullest extent allowed by law, each Party shall assume the defense of and shall pay, indemnify, and hold harmless the other Party, 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 other Party, its designees, and its employees may be subject by reason of any act or omission of the indemnifying Party, its agents or employees, in undertaking and performing under this Agreement, excepting any liability arising out of such other Party's gross negligence, willful misconduct or fraud. The indemnification obligations hereunder shall include the payment of the indemnified Party's reasonable attorney's fees, expert witness fees, litigation costs and court costs. The indemnified Party 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 the 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 the 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 the Developer or the City be considered or treated as a waiver of the rights by the waiving City or the Developer 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 the 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 the Developer, at that time or different times, of any other such remedies.
- H. **Agreement to Pay Attorneys' Fees and Expenses.** In the event a Party breaches this Agreement and the other Party employs an attorney or attorneys or incur 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, the breaching Party shall pay, on demand, the other Party'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 the Developer with respect to, the existence or nonexistence on or in the vicinity of the Rental Housing Projects 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 Rental Housing Projects as well as any activity claimed to have been undertaken on or in the vicinity of the Rental Housing Projects, that would cause or contribute to causing (1) a property in the Rental Housing Projects to become a treatment, storage or disposal facility within the meaning of, or otherwise bring a property the Rental Housing Projects 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 Rental Housing Projects, within the meaning of, or otherwise bring a property in the Rental Housing Projects 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 the 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 Rental Housing Projects, of any substances or conditions in or on a property the Rental Housing Projects, 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 Rental Housing Projects, or whether any above or underground tanks have been located under, in the Rental Housing Projects have subsequently been removed or filled.

J. **Waiver.** Each Party waives any claims against the other Party, 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 Rental Housing Projects.

K. **Right to Cure by Lender or Investor Member.** Notwithstanding anything in this Agreement, the Note, the Mortgage or the Regulatory Agreement to the contrary, in the event that Developer fails to perform a covenant as set forth in this Agreement, the Note, the Mortgage or the Regulatory Agreement, the City shall, prior to exercising any such right or remedy, send notice of such failure by Developer to the Developer's first mortgage lender and any subordinate lender (collectively, "Lender") and the Developer's investor member ("Investor Member") in accordance with this Section VII.K and the Lender and Investor Member shall have the right (but not the obligation) to cure such failure to perform by the Developer in the same manner and time period as the Developer provided however that Lender and Investor Member shall have such additional cure rights as follows:

(a) Notwithstanding the provisions of this Agreement regarding cure periods, if Developer's failure to perform is for a non-monetary covenant or other failure to perform by the Developer that is not reasonably capable of being cured within the applicable time period afforded to the Developer to cause cure (each such failure being a "Personal Developer Default"), the Lender and/or Investor Member shall provide written notice to the City within 30 days of receipt of notice of such Personal Developer Default stating that it shall cause the cure of such Personal Developer Default by exercising its rights to take over management of the Developer or foreclose or accept a deed in lieu of foreclosure on the Rental

Housing Projects. Upon receipt by the City of such notice from the Lender or the Investor Member, as applicable, the cure period shall be extended for 90 days. Notwithstanding any provision of the Agreement to the contrary, the Lender and/or Investor Member shall be under no obligation to cause the cure of any default hereunder and may elect to do so in its sole discretion.

(b) If Developer's failure to perform involves any non-monetary covenant and such non-monetary default is not reasonably capable of being caused to be cured by the Lender or the Investor Member within the 90 day cure period provided above, such period shall be extended, if possession of the Rental Housing Projects is necessary to effect such cure, provided that the party seeking such cure must (i) have begun to cause the cure of such default within the applicable cure period and continues diligently to pursue the causing of such cure and (ii) the party seeking to cause such cure must have instituted appropriate legal proceedings to obtain possession. In addition, upon such party obtaining possession of the Project, the City shall waive any event of default that cannot reasonably be cured.

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.
- B. **Loan Rider.** The provisions of the Loan Rider attached hereto as **Exhibit K** are incorporated herein by reference as if set forth fully herein. In the event of any inconsistency in the terms of this Agreement, the Note, the Mortgage or the Regulatory Agreement and the terms of the Loan Rider, the terms of the Loan Rider shall govern.
- C. **Assignment.** The 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.** The 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 the Developer, have been taken by the 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 Term, defined above. The Developer's indemnification obligations in Section VI. shall survive the termination, or expiration, of this

Agreement. Upon expiration of this Agreement, the Developer must transfer to the City any City Funds in the Developer's possession as of the time of expiration of this Agreement.

- 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 the Developer. The 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

With a copy to: City of Aurora
44 E. Downer Place
Aurora, Illinois 60507-2067
Attention: City Clerk

And: City of Aurora, Law Department
5 E. Downer Place, Suite F
Aurora, Illinois, 60507
Attention: Corporation Counsel

And: Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Attention: Michael A. Marrs/Gregory T. Smith

If to Developer: Aurora Revitalization Owner LLC
c/o The Community Builders, Inc.
135 South LaSalle Street, Suite 3350
Chicago, IL 60603
Attention: Terri Hamilton Brown or Will Woodley

The Community Builders, Inc.
185 Dartmouth Street

Boston, MA 02116
Attention: General Counsel

With a copy to: Applegate & Thorne-Thomsen, P.C.
440 South LaSalle Street, Suite 1900
Chicago, IL 60605
Attention: Ben Applegate

And: U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, MO 63103
Attention: Director of Asset Management (LIHTC)
Project No. 25052

With a copy to: Lathrop Gage
7701 Forsyth Boulevard, Suite 500
Clayton, MO 63105
Attention: Janice E. Hetland

And: BMO Harris Bank N.A.
115 S. LaSalle St., Floor 20W
Chicago, Illinois 60603
Attention: Tania Kadakia

With a copy to: Charity & Associates, P.C.
20 North Clark Street, Suite 1150
Chicago, Illinois 60602
Attention: Brandon Calvert, Esq.

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. Specifically, the Developer may provide the City with the notice addresses of any investor or lender to the Project. 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.

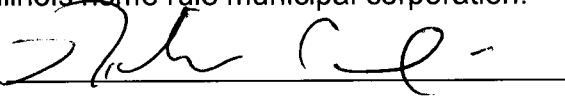
- I. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

- 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 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.


194629v6

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 of Aurora,
an Illinois home rule municipal corporation.

By: 

Its: Mayor

Attest: 
City Clerk

Aurora Revitalization Owner LLC, an Illinois limited liability company

By: Aurora Revitalization MM LLC, an Illinois limited liability company, its managing member

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

State of Illinois)
) SS
County of Kane)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Mayor Richard C. Truitt and Wendy McCambridge, personally known to me to be the ~~Acting~~ Mayor and City Clerk of the City of Aurora, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Acting Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said Illinois home rule municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois home rule municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 28 day of November, 2017.



Sara Townsend
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 _____ of Aurora Revitalization MM LLC, the managing member of Aurora Revitalization Owner LLC, 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 _____, he/she signed and delivered the said instrument as his/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 _____, 2017.

Notary Public

Exhibit A-1

Aurora Arts Centre Property Legal Description

(Attached)

Exhibit A-2

Coulter Property Legal Description

(Attached)

Exhibit B

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 C

Note – see attached

NOTE

\$ _____ .00
(Amount)

Aurora, IL

_____, 2017
(Closing Date)

Property Address: _____, Aurora, IL 60505,
PIN: _____ ("Premises")

THIS NOTE is made effective as of the date stated above by Aurora Revitalization Owner LLC, an Illinois limited liability company ("BORROWER"), whose address is 135 South LaSalle Street, Suite 3350, Chicago, IL 60603, and is payable to the order of the City of Aurora, Neighborhood Redevelopment Division ("LENDER"), whose mailing address is 51 E. Galena Blvd, Aurora, IL 60505.

1. BORROWER'S PROMISE TO PAY

In return for a loan received under the Development Agreement between the City of Aurora and Aurora Revitalization Owner LLC approved by City Council resolution _____, with an effective date of _____ ("Development Agreement"), BORROWER promises to pay LENDER the principal sum of _____ AND 00/100 DOLLARS (\$ _____ .00) of U.S. dollars ("PRINCIPAL") with interest in the amount of [three] percent [(3.0%)], compounding, on the terms set forth in the Development Agreement, except as set forth in Paragraph 5.D. below. All outstanding principal and interest under this Note will be due and payable on _____, 2057.

The BORROWER acknowledges and agrees that the LENDER may transfer this Note following the delivery of written notice to BORROWER in accordance with Section 10 hereof. The LENDER or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. TERMS

BORROWER understands that it is required to make payments of principal or interest on this loan as set forth in the Development Agreement, and that repayment of the Note is due on the date set forth in Development Agreement. BORROWER promises to pay the full amount of principal if prior to the maturity date (and subject to any notice and cure period herein or in the Development Agreement), the twelve Funded Units cease to be maintained and operated as affordable housing for households as required in the Development Agreement. This Note and the Mortgage securing this Note are subject to all of the terms and conditions contained in the Development Agreement.

3. PAYMENTS

All payments under this Note shall be sent to the CITY OF AURORA, Neighborhood

Redevelopment Division, Attn: _____ Development Agreement, 51 E.
Galena Blvd, Aurora, IL 60505 or to such other place required by LENDER.

4. BORROWER'S RIGHT TO PREPAY

BORROWER has the right to make payments of principal at any time before it is due. A payment of principal only is known as a "prepayment." When BORROWER makes a prepayment, BORROWER will tell the Note Holder in writing that BORROWER is doing so.

BORROWER may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that BORROWER owes under this Note. If BORROWER makes a partial prepayment, there will be no changes in the due date unless the Note Holder agrees in writing to those changes.

5. BORROWER'S FAILURE TO PAY AS REQUIRED

If BORROWER violates any provision of the Development Agreement, this Note, or the Mortgage securing this Note, BORROWER shall be in default under this Note. The Note Holder shall notify the BORROWER in writing of any default. BORROWER shall have a period of thirty (30) days (or such longer cure period set forth in the applicable document) after such notice is given within which to cure the default prior to exercise of remedies by the Note Holder under this Note. BORROWER promises to make full payment of principal under this Note immediately upon Note Holder's demand if Note Holder declares BORROWER in default and such default is continuing under the terms of this Note or the Mortgage securing this Note following the expiration of any applicable cure period.

A. Notice of Default

If BORROWER is in default and such default is continuing, the Note Holder may, but is not required to, send BORROWER a written notice telling BORROWER that if BORROWER does not cure the default by a certain date, the Note Holder may require BORROWER to pay immediately the full amount of principal that has not been paid following the expiration of any applicable cure period.

B. No Waiver By Note Holder

Even if the Note Holder does not require BORROWER to pay immediately in full as described above, at a time when BORROWER is in default, the Note Holder will still have the right to do so if BORROWER is in default and such default is continuing at a later time following the expiration of any applicable cure period.

C. Payment of Note Holder's Costs and Expenses

If the Note Holder has required BORROWER to pay immediately in full as described above, the Note Holder will have the right to be paid back by BORROWER for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

D. Default Interest

If a Default occurs by reason of BORROWER using, selling, transferring, assigning, or conveying the premises to which this Note applies, contrary to any term of the Development Agreement, then in addition to other available remedies, default interest shall be due and payable at the annual rate of Ten Percent (10%) from the date of default to the date of full repayment of the principal.

6. GIVING OF NOTICES

Unless applicable law requires a different method, any notice given to BORROWER under this Note will be given by delivering it or by mailing it by prepaid first class mail to BORROWER in accordance with Section 10 hereof. Any notice that must be given to the Note Holder under this Note will be given by mailing it by prepaid first class mail to the Note Holder at the address stated in Section 3 above or at a different address if BORROWER is given a written notice of that different address.

7. OBLIGATIONS OF PERSONS UNDER THIS NOTE

This Note is a nonrecourse obligation of Borrower. Neither Borrower nor any of its officers, members or their respective successors and assigns, nor any other party shall have any personal liability for repayment of this Note. The sole recourse of Note Holder under this Note for repayment of the Loan shall be the exercise of its rights against the premises in accordance with the Mortgage and any related security thereunder.

8. WAIVERS

BORROWER and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

9. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a mortgage, discussed above, dated the same date as this Note, protects the Note Holder from possible losses which might result if BORROWER does not keep the promises which BORROWER make in this Note. That Mortgage describes how and under what conditions BORROWER may be required to make immediate payment in full of all amounts BORROWER owe under this Note.

10. NOTICES

Any notice, demand, request or other communication which any party may desire or may be required to give to any other party hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to City: City of Aurora
Neighborhood Redevelopment Division
51 E. Galena Blvd
Aurora, Illinois 60505
Attn: Manager

With a copy to: City of Aurora
44 E. Downer Place
Aurora, Illinois 60507-2067
Attention: City Clerk

And: City of Aurora, Law Department
5 E. Downer Place, Suite F
Aurora, Illinois, 60507
Attention: Corporation Counsel

And: Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Attention: Michael A. Marrs/Gregory T. Smith

If to Borrower: Aurora Revitalization Owner LLC
c/o The Community Builders, Inc.
135 South LaSalle Street, Suite 3350
Chicago, IL 60603
Attention: Terri Hamilton Brown or Will Woodley

The Community Builders, Inc.
185 Dartmouth Street
Boston, MA 02116
Attention: General Counsel

With a copy to: Applegate & Thorne-Thomsen, P.C.
440 South LaSalle Street, Suite 1900
Chicago, IL 60605

Attention: Ben Applegate

And: U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, MO 63103
Attention: Director of Asset Management (LIHTC)
Project No. 25052

With a copy to: Lathrop Gage
7701 Forsyth Boulevard, Suite 500
Clayton, MO 63105
Attention: Janice E. Hetland

And: BMO Harris Bank N.A.
115 S. LaSalle St., Floor 20W
Chicago, Illinois 60603
Attention: Tania Kadakia

With a copy to: Charity & Associates, P.C.
20 North Clark Street, Suite 1150
Chicago, Illinois 60602
Attention: Brandon Calvert, Esq.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Aurora Revitalization Owner LLC, an Illinois limited liability company

By: Aurora Revitalization MM LLC, an Illinois limited liability company, its managing member

By: _____
Name: _____
Title: _____

Exhibit D

Mortgage

(Attached)

Prepared by and to be returned to:
City of Aurora Neighborhood Redevelopment Division
51 E. Galena Blvd.
Aurora, IL 60505

Property Address: _____ 60505,
PIN: _____ ("Premises")

MORTGAGE (ILLINOIS)

THIS MORTGAGE (ILLINOIS) ("Mortgage"), made effective as of the ____ day of _____, 2017, between Aurora Revitalization Owner LLC, an Illinois limited liability company, having a principal place of business at 135 South LaSalle Street, Suite 3350, Chicago, IL 60603, herein referred to as "MORTGAGOR," and the CITY OF AURORA, a municipal corporation, 44 E. Downer Place, Aurora, IL 60505, herein referred to as "MORTGAGEE,"

WITNESSETH:

THAT WHEREAS the MORTGAGOR is justly indebted to the MORTGAGEE upon the note of the same date herewith, attached hereto as **Exhibit A** in the principal sum of _____ AND 00/100 DOLLARS (\$ _____ .00), payable to the order of and delivered to the MORTGAGEE, in and by which note the MORTGAGOR promises to pay the full amount of principal if prior to the maturity date the twelve Funded Units cease to be maintained and operated as affordable housing for households as required under the Development Agreement, and all of said principal is made payable at such place as the holders of the note may, from time to time, in writing appoint, and in absence of such appointment, then at the office of the MORTGAGEE at 44 E. DOWNER PLACE, AURORA, ILLINOIS 60507.

NOW, THEREFORE, the MORTGAGOR, to secure the payment of the said principal sum of money in accordance with the terms, provisions and limitations of this mortgage, and the performance of the covenants and agreements herein contained, by the MORTGAGOR to be performed, and also in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents CONVEY AND WARRANT unto the MORTGAGEE, and the MORTGAGEE'S successors and assigns, a security interest in the following described Real Estate and all of the estate, right, title and interest therein, situated, lying and being in the CITY OF AURORA, COUNTY OF KANE, AND STATE OF ILLINOIS, to wit:

LEGAL DESCRIPTION:

[To come], in the City of Aurora, Kane County, Illinois.

Which, with the property hereinafter described, is referred to herein as the "premises,"

Permanent Real Estate Index Number(s): _____

Address of Real Estate: _____, Aurora, Illinois, 60505.

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as MORTGAGOR may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, awnings, stoves, and water heaters. All the foregoing are declared to be a part of said real estate of the premises, whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the premises by MORTGAGOR or its successors or assigns shall be considered as constituting part of the real estate.

TO HAVE AND TO HOLD the premises unto the MORTGAGEE, and the MORTGAGEE'S successors and assigns, forever, for the purposes, and upon the uses herein set forth, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the MORTGAGOR does hereby expressly release and waive.

The name of the record owner is: Aurora Revitalization Owner LLC

This Mortgage consists of (11) eleven pages. The covenants, conditions and provisions appearing on pages four (4) through (11) eleven are incorporated herein by reference and are a part hereof and shall be binding on the MORTGAGOR, its heirs, successors and assigns.

IN WITNESS WHEREOF, the MORTGAGOR, has caused its corporate seal to be hereto affixed and these presents to be signed by its Manager on the day and year first written, pursuant to authority given by resolutions duly passed by the Members of said limited liability company.

Aurora Revitalization Owner LLC, an Illinois limited liability company

By: Aurora Revitalization MM LLC, an Illinois limited liability company, its managing member

By: _____
Name: _____
Title: _____

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 _____ of Aurora Revitalization MM LLC, the managing member of Aurora Revitalization Owner LLC, 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 _____, he/she signed and delivered the said instrument as his/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 _____, 20__.

Notary Public

Mail this instrument to Manager, Project # _____, City of Aurora, Neighborhood Redevelopment Division, 51 E. Galena Blvd, Aurora, IL 60505

THE COVENANTS, CONDITIONS AND PROVISIONS OF THE MORTGAGE

1. MORTGAGOR shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (2) keep said premises in good condition and repair in accordance with the City of Aurora Building and Life Safety Codes without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien thereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof except those mortgages which constitute a lien on the date hereto, and upon request exhibit satisfactory evidence of the discharge of such prior lien following the due date of any such indebtedness to the MORTGAGEE; (4) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises; (5) comply with all requirements of Federal, State, and City of Aurora, law, ordinance, or regulation with respect to the premises and the use thereof; (6) make no material alterations in said premises except as required by Federal, State, and City of Aurora law, ordinance, or regulation, or as approved by the MORTGAGEE; (7) comply with all terms of the Development Agreement between the City of Aurora and Aurora Revitalization Owner LLC, with an effective date of _____, 2017 (the "Development Agreement"). Notwithstanding anything contained herein, this Mortgage is subject to all of the terms and conditions contained in the Development Agreement.

2. MORTGAGOR shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to the MORTGAGEE duplicate receipts therefor. Notwithstanding anything in this Mortgage to the contrary, MORTGAGOR shall be permitted to contest any tax or assessment in good faith by appropriate legal proceedings, provided that during such contest MORTGAGOR shall, at the option of MORTGAGEE, provide security reasonably satisfactory to MORTGAGEE, assuring the discharge of the underlying obligations associated with such contest and provided further that if at any time payment of any obligation becomes necessary to prevent the delivery of a tax deed or its equivalent conveying the premises or any part thereof, MORTGAGOR shall pay the same in sufficient time to prevent the delivery of such tax deed or its equivalent.

3. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the MORTGAGEE the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by MORTGAGOR, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the MORTGAGEE'S interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then and in any such event, the MORTGAGOR, upon demand by the MORTGAGEE, shall pay such taxes or assessments, or reimburse the MORTGAGEE therefor; provided, however, that if in the opinion of counsel for the MORTGAGEE (a) it might be unlawful to require MORTGAGOR to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such

event, the MORTGAGEE may elect, by notice in writing given to the MORTGAGOR, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

4. If, by the laws of the United States of America or of any state having jurisdiction in the premises, any tax is due or becomes due in respect of the issuance of the note hereby secured, the MORTGAGOR covenants and agrees to pay such tax in the manner required by any such law. The MORTGAGOR further covenants to hold harmless and agrees to indemnify the MORTGAGEE, and the MORTGAGEE'S successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the note secured hereby other than income tax or its equivalent.

5. At such time as the MORTGAGOR is not in default either under the terms of the note secured hereby or under the terms of this mortgage, the MORTGAGOR shall have such privilege of making prepayments on the principal of said note (in addition to the required payments) as may be provided in said note.

6. MORTGAGOR shall keep all buildings and improvements now or hereafter situated on said premises insured against loss or damage by fire, lightning and windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby, all in companies satisfactory to the MORTGAGEE, under insurance policies payable, in case of loss or damage, to MORTGAGEE, such rights to be evidenced by the standard mortgage clause to be attached to each policy, and shall deliver all policies, including additional and renewal policies, to the MORTGAGEE, and in case of insurance about to expire, shall deliver renewal policies not less than ten days prior to the respective dates of expiration.

7. The MORTGAGOR'S breach of any covenant, condition, provision or agreement in this Mortgage shall be considered a default although no legal or formal demand has been made therefore. In case of default herein and provided such default is continuing, MORTGAGEE may, but need not, make any payment or perform any act hereinbefore required of MORTGAGOR in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other moneys advanced by MORTGAGEE to protect the mortgaged premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due any payable without notice and with interest thereon equal to the rate of interest set forth in the Note secured hereby. Inaction of MORTGAGEE shall never be considered as a waiver of any right accruing to the MORTGAGEE on account of any default hereunder on the part of the MORTGAGOR.

8. The MORTGAGEE making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

9. The MORTGAGOR shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms hereof. At the option of the MORTGAGEE and without notice to MORTGAGOR, all unpaid indebtedness secured by this Mortgage shall, following the occurrence and continuance of a default hereunder and the expiration of any applicable cure periods, and notwithstanding anything in the note or in this Mortgage to the contrary, become due and payable upon written notice from the MORTGAGOR. The MORTGAGEE shall have a period of thirty (30) days after such notice is given within which to cure the default prior to exercise of MORTGAGOR of its remedies under this Mortgage.

10. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, MORTGAGEE shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of MORTGAGEE for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches, and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as MORTGAGEE may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the highest rate now permitted by Illinois law, when paid or incurred by MORTGAGEE in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which the MORTGAGEE shall be a party, either as plaintiff or claimant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the premises or the security hereof.

11. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any overplus to MORTGAGOR, its heirs, legal representatives or assigns, as their rights may appear.

12. Upon or at any time after the filing of a complaint to foreclose this Mortgage the court in which such complaint is filed may appoint a receiver of said premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of MORTGAGOR at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and the MORTGAGEE may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when MORTGAGOR, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The Court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (1) The indebtedness secured hereby, or by an decree foreclosing this mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (2) the deficiency in case of a sale and deficiency.

13. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the note hereby secured.

14. The MORTGAGEE shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

15. If so requested by MORTGAGEE, the MORTGAGOR shall periodically deposit with the MORTGAGEE such sums as the MORTGAGEE may reasonably require for payment of taxes and assessments on the premises (but not in excess of six months of such expenses). No such deposit shall bear any interest.

16. If the payment of said indebtedness or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provision hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the MORTGAGEE, notwithstanding such extension, variation or release.

17. MORTGAGEE shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby.

18. This Mortgage and all provision hereof, shall extend to and be binding upon MORTGAGOR and all persons claiming under or through MORTGAGOR, and the word "MORTGAGOR" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons

shall have executed the note or this Mortgage. The word "MORTGAGEE" when used herein shall include the successors and assigns of the MORTGAGEE named herein and the holder or holders, from time to time, of the note secured hereby.

19. In the event the MORTGAGOR incurs any lien superior to that which is secured by this Mortgage, other than liens in existence on the date hereof or previously disclosed to MORTGAGEE, the MORTGAGOR shall provide written notice, in advance, to the MORTGAGEE.

20. If, prior to the maturity date, the [twelve] Funded Units cease to be maintained and operated as affordable housing for households as follows, (A) for [three] of the Funded Units, limit to occupants with initial incomes at or below Thirty Percent (30%) of the Chicago-Joliet-Naperville Area Median Income, and (B) for the remaining [nine] Funded Units, limit to occupants with initial incomes at or below Fifty Percent (50%) of the Chicago-Joliet-Naperville Area Median Income, as established by the United States Department of Housing and Urban Development, the principal shall immediately come due within thirty (30) days of such change of use (subject to any notice and cure period in the Development Agreement). The MORTGAGOR shall promptly notify MORTGAGEE of any such change in use. However, this remedy shall not be exercised by MORTGAGEE if exercise of such change is prohibited by Federal law as of the date of the effective date of such change.

21. The MORTGAGOR shall not:

- a. Except for the purpose of obtaining and securing financing for the construction, rehabilitation and development of the premises, sell, transfer, convey, encumber, or assign the title or its interest to all or any portion of the premises, or the rents, issues, or profits therefrom, whether by operation of law, voluntarily, or otherwise, and shall not contract to do any of the foregoing (any such sale, transfer, conveyance, encumbrance, assignment or agreement to do any of the foregoing being herein referred to as an "Ownership Transfer") without MORTGAGEE'S prior written consent. Notwithstanding the foregoing, neither the pledge or assignment of membership interests in the Mortgagor, the withdrawal, removal, replacement, and/or addition of the managing member of the MORTGAGOR, nor the withdrawal, replacement, and/or addition of any of its investor members or its investor members' partners or members, shall constitute a default under this Mortgage, and any such actions shall not accelerate the maturity of the Loan. Nothing in this Mortgage shall limit the ability of any of the MORTGAGOR's investor members to sell or transfer its interests in the MORTGAGOR or require the prior consent of the MORTGAGEE to such sale or transfer, nor shall such sale or transfer be considered a default of this Mortgage.
- b. Fail to maintain the said Premises and its grounds and equipment pertinent thereto according to the standard of all local and state codes and ordinances or fail to purchase fire and extended coverage insurance and flood insurance,

if required, thereon and provide and file a certificate of said coverage with the MORTGAGEE, the proceeds of which, in the event said Premises shall be destroyed or damaged by fire or other casualty, shall be used for reconstruction of said structure upon said real estate.

MORTGAGOR'S breach of the foregoing covenants, conditions and provisions contained in this Paragraph 21 shall each constitute a "Material Default" and, in the event such Material Default is continuing, will entitle MORTGAGEE, following expiration of the applicable cure period identified below and in the Development Agreement, to the remedies specified in Paragraph 22. MORTGAGEE shall give MORTGAGOR written notice of a Material Default within fifteen (15) days of MORTGAGOR learning of such Material Default. MORTGAGOR shall have a period of thirty (30) days after such notice is given within which to cure the Material Default prior to exercise of MORTGAGEE of its remedies under this Mortgage.

22. In addition to any other remedy herein specified, if any Material Default under this Mortgage shall occur and being continuing, which is not cured within the applicable cure period (including, without limitation, the separate cure period for the investor member or lender to MORTGAGOR as set forth in the Development Agreement), MORTGAGEE may, at its option:

- a. Declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by MORTGAGOR) whereupon the same shall become immediately due and payable.
- b. Institute proceedings for the complete foreclosure of this Mortgage.
- c. Take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition, provisions or agreement in the Note, this Mortgage, the Development Agreement between the MORTGAGEE AND MORTGAGOR, or in any of the other loan documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as MORTGAGEE shall elect, recover judgment on the Note or any guarantee either before, during or after or in lieu of any proceedings for the enforcement of this Mortgage.
- d. Exercise any or all of the rights and remedies available to a secured party under the Uniform Commercial Code.
- e. Charge default interest at the annual rate of Ten Percent (10%) per annum.

- f. Enforce this Mortgage in any other manner permitted under the laws of the State of Illinois.

23. The MORTGAGOR shall give the MORTGAGEE prompt notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the premises and shall deliver to MORTGAGEE copies of any and all papers served in connection with any such proceeding. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the premises or for conveyance in lieu of condemnation are hereby assigned and shall be paid to the MORTGAGEE and shall be applied to the sums secured by this Mortgage as if the Note had been prepaid on the date the condemnation award is approved, whether or not then due, with any excess paid to MORTGAGOR. If the premises are abandoned by MORTGAGOR or if, after notice by the MORTGAGEE to MORTGAGOR that the condemnor offers to make an award or settle a claim for damages, MORTGAGOR fail to respond to the MORTGAGEE within thirty (30) days after the date the notice is given, the MORTGAGEE is authorized to accept such award or settlement and to collect and apply the proceeds, at its option, either to restoration or repair of the premises or to the sums secured by this Mortgage, whether or not then due.

24. All of the covenants of this Mortgage shall encumber the premises and be binding on any successor in interest to the obligations of the MORTGAGOR under this Mortgage until this Mortgage is released or foreclosed. If the ownership of the premises or any portion of it becomes vested in a person or persons other than MORTGAGOR, MORTGAGEE may, without notice to MORTGAGOR, deal with such successor or successors in interest of MORTGAGOR with reference to this Mortgage and the secured indebtedness in the same manner as with MORTGAGOR without in any way releasing or discharging MORTGAGOR from its obligations under this Mortgage, unless the premises has been assigned or otherwise transferred with MORTGAGEE'S written consent pursuant to this Mortgage. MORTGAGOR shall give prompt written notice to MORTGAGEE of any conveyance, transfer or change of ownership of the premises, but nothing in this Paragraph 24 shall vary or negate the provisions of default provisions of Paragraph 21.

25. The MORTGAGOR shall indemnify and hold MORTGAGEE harmless, to the full extent allowed by law, from and against any and all damages, losses, costs and expenses, including, but not limited to reasonable attorneys' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with (A) any claims for brokerage commissions or finder's fees arising out of MORTGAGOR'S conduct or alleged conduct or (B) any suit or proceeding, threatened, filed or pending, in or to which MORTGAGEE is or may become or may have to become a party by reason of or arising out of or on account of or in connection with this mortgage indebtedness, the premises or of the loan documents; however, MORTGAGOR shall not be required to either indemnify or hold MORTGAGEE harmless for any damages, losses, costs or expenses of MORTGAGEE resulting solely from the gross negligence or willful misconduct of MORTGAGEE. Upon demand by MORTGAGEE, MORTGAGOR shall also defend MORTGAGEE in a matter set forth above with counsel selected by MORTGAGEE.

26. Other than matters disclosed in environmental reports delivered to MORTGAGOR, neither the MORTGAGOR nor any other person with MORTGAGOR'S knowledge, based upon reasonable investigation, has ever caused or permitted any Hazardous Substances (as hereinafter defined) in any quantity that violates any Law (as defined in this Paragraph 26 below) to be placed, held, located or disposed of on, under or at the premises or any part thereof, neither the premises or any part thereof has ever been used as a dump site or storage site, and neither the premises nor any part thereof contains any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants above levels permitted by any applicable Law (including, without limitation, petroleum and petroleum products, asbestos-containing materials, biohazard materials, mold, mildew, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, flammables and explosives), as those terms are used in the Resource Conservation and Recovery Act (42 USC § 6901, et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601, et seq.), the Hazardous Materials Transportation Act (49 USC § 1802, et seq.), the Toxic Substances Control Act (15 USC § 2601, et seq.), the Clean Air Act (42 USC § 7401 et seq.), the Refuse Act (33 USC § 407, et seq.), the National Environmental Policy Act (42 USC § 4231, et seq.), the Indoor Radon Abatement Act (P.L. 100-551, the Safe Drinking Water Act (42 USC § 1251, et seq.), or in any regulations promulgating pursuant thereto, or in any other applicable Law (collectively "Hazardous Substances") and no Hazardous Substances shall be generated, released, stored, buried or deposited over, beneath, in or on the premises above levels permitted by applicable Law. As used herein the "Law" means any law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any Official Body (as defined in this Paragraph 26 below), including, without limitation, those relating to zoning, subdivision, building, safety, fire protection or environmental matters. As used herein the term "Official Body" means any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic. MORTGAGOR hereby indemnifies, protects and holds MORTGAGEE harmless of and from and agrees to defend MORTGAGEE against any and all loss, cost or damage (including reasonable attorneys' fees and expenses) which MORTGAGEE may incur by reason of any breach or inaccuracy in any of the representations, warranties, covenants, agreements and indemnities set forth in this section.

27. If a court of competent jurisdiction holds any provision of this Mortgage to be illegal, unenforceable or invalid, then it is the intent of MORTGAGOR and MORTGAGEE that such provision shall be given full force and effect to the fullest possible extent that is legal, valid and enforceable. It is the intent of MORTGAGOR and MORTGAGEE that the MORTGAGEE have a valid and enforceable lien created by this Mortgage securing each and all of the sums described in this Mortgage and that this Mortgage be construed as creating such a valid lien in favor of MORTGAGEE notwithstanding the unenforceability of one or more of its provisions; the unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions of it unenforceable or invalid.

28. No action for the enforcement of the lien or any provisions of this Mortgage shall be subject to any defense that would not be good and available to the party interposing it in an action at law upon the note.

29. The MORTGAGOR shall sign, execute, acknowledge and deliver to MORTGAGEE upon request such security agreements, assignments for security purposes and other documents in form and substance required by MORTGAGEE as MORTGAGEE may, in its reasonable judgment, request from time to time, to perfect, preserve, continue, extend or maintain the assignments contained in this Mortgage, the lien and security interests under this Mortgage, and their priority.

30. If (a) MORTGAGEE is made a party to, or intervenes in any action or proceeding affecting the premises, title to it or the interest of MORTGAGEE under this Mortgage, or (b) MORTGAGEE employs an attorney to collect any or all of the secured indebtedness or to foreclose this Mortgage by judicial proceedings following the occurrence and continuance of a default hereunder and beyond any applicable cure periods, or (c) MORTGAGEE conducts MORTGAGEE'S sale proceedings under this Mortgage, MORTGAGEE shall be reimbursed by MORTGAGOR, immediately and without demand, for all costs, charges and reasonable attorneys' fees incurred by MORTGAGEE, and such costs, charges and fees shall be secured by this Mortgage as a further charge and lien upon the development.

31. As further security for the Note and this Mortgage, MORTGAGOR grants MORTGAGEE a security interest in and to all and any property of MORTGAGOR of any kind or description, tangible or intangible, now or hereafter delivered, transferred, in transit to, or kept in the possession, control or custody of MORTGAGEE, or any agent or bailee of MORTGAGEE, whether expressly as collateral security or for any other property of MORTGAGOR now or hereafter in the possession, control or custody or assigned to MORTGAGEE and used or useful in connection with the premises. All of the aforesaid property is referred to collectively in this Mortgage as the "Further Collateral." Upon the occurrence or existence and during the continuance of any Material Default under this Mortgage, MORTGAGEE shall have the right to exercise any rights and remedies available to it, subject to the rights of prior lienholders and any applicable cure rights of MORTGAGOR, its investor member and its lenders, if any, shall have the right to sell any or all of the Further Collateral at public or private sale upon such terms and conditions as MORTGAGEE deems proper, provided such sale is conducted in a commercially reasonable manner in all respects, and to apply the net proceeds of such sale, after deducting all costs, expenses and attorneys' fees incurred at any time in the collection and sale of the Further Collateral, to the payment of sums due under the Note, this Mortgage, or both of them.

32. Nothing contained in this Mortgage, Note or any other document or instrument related to the premises shall be deemed to create a joint venture or partnership relationship between the MORTGAGEE and MORTGAGOR; the relationship is solely that

of creditor and debtor, lender and borrower, and mortgagor and MORTGAGEE, as the case may be.

33. Notices. Any notice, demand, request or other communication which any party may desire or may be required to give to any other party hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Mortgagee: City of Aurora
Neighborhood Redevelopment Division
51 E. Galena Blvd
Aurora, Illinois 60505
Attn: Manager

With a copy to: City of Aurora
44 E. Downer Place
Aurora, Illinois 60507-2067
Attention: City Clerk

And: City of Aurora, Law Department
5 E. Downer Place, Suite F
Aurora, Illinois, 60507
Attention: Corporation Counsel

And: Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Attention: Michael A. Marrs/Gregory T. Smith

If to Mortgagor: Aurora Revitalization Owner LLC
c/o The Community Builders, Inc.
135 South LaSalle Street, Suite 3350
Chicago, IL 60603
Attention: Will Woodley or Terri Hamilton Brown

The Community Builders, Inc.
185 Dartmouth Street
Boston, MA 02116
Attention: General Counsel

With a copy to: Applegate & Thorne-Thomsen, P.C.

440 South LaSalle Street, Suite 1900
Chicago, IL 60605
Attention: Ben Applegate

And: U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, MO 63103
Attention: Director of Asset Management (LIHTC)
Project No. 25052

With a copy to: Lathrop Gage LLP
7701 Forsyth Boulevard, Suite 500
Clayton, MO 63105
Attention: Janice E. Hetland

And: BMO Harris Bank N.A.
115 S. LaSalle St., Floor 20W
Chicago, Illinois 60603
Attention: Tania Kadakia

With a copy to: Charity & Associates, P.C.
20 North Clark Street, Suite 1150
Chicago, Illinois 60602
Attention: Brandon Calvert, Esq.

Exhibit A to Mortgage

Legal Description and Property Address

Legal Description

[to come], in the City of Aurora, Kane County, Illinois.

Permanent Index Number

Property Address

_____, Aurora, IL 60505

Exhibit E

Regulatory and Land Use Restriction Agreement

(Attached)

Prepared by and to be
returned to:
City of Aurora
Neighborhood
Redevelopment Division
51 E. Galena Blvd.
Aurora, IL 60505

REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT ("Regulatory Agreement") is made effective as of this ____ day of _____, 2017, by and between Aurora Revitalization Owner LLC, an Illinois limited liability company, having a principal place of business at 135 South LaSalle Street, Suite 3350, Chicago, Illinois 60603 ("Borrower"), and the CITY OF AURORA, Illinois, a body corporate and politic of the State of Illinois ("City"), having its principal offices at 44 E. Downer Place, Aurora, Illinois 60507.

RECITALS

A. Borrower is the fee owner of that certain real property legally described in **Exhibit A** attached hereto and by this reference made a part hereof (the "Real Estate").

B. [Describe source of City funds] (the City Funds").

C. The City has agreed to make a loan to Borrower of City Funds for the rehabilitation of the Real Estate.

D. Borrower has executed and delivered to the City its promissory note ("Note") as evidence of its indebtedness to City in the principal amount of the loan, with interest thereon at the rates and payable at the times and in the manner as specified in the Note.

E. The Loan is evidenced, secured and governed by, among other things: (a) a Development Agreement between the City of Aurora and Aurora Revitalization Owner LLC, approved by the City of Aurora City Council in Resolution number R_____, and executed by the Borrower and the City on _____, 2017 ("Development Agreement"), together with any subsequent amendments thereto, (b) the Note and (c) a Mortgage in the amount of _____ AND 00/100 DOLLARS (\$_____.00) executed of even date herewith, together with any subsequent mortgage(s) given by Borrower and secured against the Real Estate referred to as "Mortgage." This Regulatory Agreement, the Development Agreement, the Note, the Mortgage, and all other documents executed by Borrower which evidence, govern or secure the loan are collectively referred to as the "Loan Documents."

F. As an inducement to City to make the loan, Borrower has agreed to enter into this Regulatory Agreement in accordance with the terms, conditions, and covenants set forth below.

G. Capitalized terms used herein and not otherwise defined shall have the meanings established in the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Incorporation. The foregoing recitals are made a part of this Regulatory Agreement as fully and with the same force and effect as if repeated herein at length.

2. Regulatory Compliance. Borrower agrees that at all times its acts regarding the Real Estate and the improvements now or hereinafter located thereon comprising the Rental Housing Projects (as defined in the Development Agreement) (the Rental Housing Projects, as defined in the Development Agreement, are also referred to herein as the "Project") shall be in conformance with the Development Agreement and any additional rules, regulations, policies and procedures of City promulgated thereunder, all as the same may be amended and supplemented from time to time. The Borrower shall obtain all Federal, State and City approvals required for the Project. The Borrower shall cause the Project to comply with all local codes, ordinances, zoning ordinances, and the City of Aurora Property Standards Policy.

3. Occupancy and Rental Restrictions. Borrower further represents, warrants, covenants and agrees that:

- a. The Real Estate, as described in the attached Legal Description, is improved with ___ multi-family units, twelve (12) of which are funded through the City Funds (the "Funded Units"). The Funded Units include twelve one bedroom units that shall be used to provide permanent, affordable rental housing for households as follows, (A) for [three] of the Funded Units, limit to occupants with initial incomes at or below Thirty Percent (30%) of the Chicago-Joliet-Naperville Area Median Income, and (B) for the remaining [nine] Funded Units, limit to occupants with initial incomes at or below Fifty Percent (50%) of the Chicago-Joliet-Naperville Area Median Income, as established by the United States Department of Housing and Urban Development ("HUD"), from time to time, adjusted for family size.
 - i. The specific Funded Units at Closing must be identified no later than the time of initial occupancy.
 - ii. The twelve (12) Funded Units may be floating units within the Project site.

- iii. The Developer must ensure that the twelve (12) Funded Units remain comparable to the non-assisted units over the Affordability Period in terms of size, features, and number of bedrooms.
 - b. The Project shall be deemed to comply with this Paragraph 3, despite a temporary noncompliance with this Paragraph 3, if (i) the noncompliance is caused by increases in the income of the household already occupying the Project, and (ii) actions satisfactory to City, in its sole discretion, are being taken to ensure that all vacancies are filled in accordance with this Paragraph 3 until the noncompliance is corrected. Tenants that no longer qualify as low-income families must pay as rent an amount not less than thirty percent (30%) of the Family's Adjusted monthly Income, as recertified annually.
 - c. Subject to termination in the event of foreclosure or transfer in lieu of foreclosure, the occupancy and rental restriction provisions of this Paragraph 3 shall remain in effect for a period of twenty (20) years from the date of first occupancy after rehabilitation of the Project (the "Affordability Period").
4. Acts Requiring City Approval. Except as permitted pursuant to the other Loan Documents and except as in effect on the date hereof or previously disclosed to City, Borrower shall not without the prior written approval of City, which may be given or withheld in City's sole discretion:
- a. Convey, transfer or encumber the Project or any part thereof, or permit the conveyance, transfer, or encumbrance of the Project or any part thereof.
 - b. Convey, assign or transfer any right to manage or receive the rents and profits from the Project.
 - c. Rent any Unit for less than one (1) year, unless otherwise mutually agreed in writing by Borrower and the tenant in accordance with the Regulations.
 - d. Require, as a condition of the occupancy or leasing of any Unit in the Project, any consideration or deposit other than the pre-payment of the first month's rent plus a security deposit in an amount not to exceed one (1) month's rent to guarantee the performance by the tenant of the covenants of such lease. Any funds collected by Borrower as security deposits shall be kept separate and apart from all other funds of the Project.
5. Violation of Agreement by Borrower. Upon violation of any of the provisions of this Regulatory Agreement by Borrower, the City shall give written notice thereof to Borrower in the manner provided in Paragraph 13 hereof. If such violation is not corrected to the satisfaction of City within thirty (30) days after the date such notice is mailed, or within such further time as City in its sole discretion permits (but if such non-monetary default is of a nature that it cannot be cured within such thirty (30) day period, then so long as Borrower commences to cure within such thirty (30) day period and diligently

pursues such cure to completion within a reasonable period not to exceed forty five (45) days from the date of such notice (or such longer cure period as set forth in the Development Agreement), such violation shall not be considered to be a default), or if any default or event of default under any other Loan Document is not cured within any applicable grace, cure or notice period set forth therein, then the City may declare a Default under this Regulatory Agreement ("Default"), effective on the date of such declaration of default and notice thereof to Borrower, and upon the occurrence and during the continuance of such default the City may, after the expiration of the cure rights contained in the Loan Documents, undertake any or all of the following:

- a. Declare the whole of the indebtedness under the Note immediately due and payable and proceed with the rights and remedies set forth in the Mortgage.
- b. Withhold further disbursement of the Loan.
- c. Collect all rents and charges in connection with the operation of the Project and use such collections to pay Borrower's obligations under this Regulatory Agreement, the Note, the Mortgage, the other Loan Documents and such other obligations of Borrower in connection with the Project and the necessary expenses of preserving and operating the Project.
- d. Take possession of the Project, bring any action necessary to enforce any rights of Borrower in connection with the operation of the Project and operate the Project in accordance with the terms of this Regulatory Agreement until such time as City, in its sole discretion, determines that Borrower is again in a position to operate the project in accordance with the terms of the Regulatory Agreement and in compliance with the requirements of the Notes and the Mortgage.
- e. Apply to any State or Federal court for an injunction against any violation of this Regulatory Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, or for such other relief as may be appropriate.
- f. Use and apply any monies deposited by Borrower with the City regardless of the purpose for which the same were deposited, to cure any such default or to repay any indebtedness under the Development Agreement or any other Loan Document which is due and owing to the City.
- g. Exercise such other rights or remedies as may be available to the City hereunder, under any other Loan Document, at law or in equity.

The City's remedies are cumulative, and the exercise of one remedy shall not be deemed an election of remedies, nor foreclose the exercise of any other remedy by the City. No waiver of any breach of this Regulatory Agreement by the City shall be deemed to be a waiver of any other breach or a subsequent breach. If the City fails to exercise, or delays

in exercising, any right under this Regulatory Agreement, such failure or delay shall not be deemed a waiver of such right or any other right.

6. Termination of Liabilities.

- a. In the event City consents to a sale or other transfer of the Project, or in the event of a permitted sale or other transfer, if any, pursuant to the Loan Documents, all of the duties, obligations, undertakings and liabilities of the transferor under the terms of this Regulatory Agreement shall thereafter cease and terminate as to such transferor, except as to any acts or omissions or obligations to be paid or performed by such transferor that occurred or arose prior to such sale or transfer; provided, however, as a condition precedent to the termination of the liability of the transferor hereunder, the transferee of the project ("New Borrower") shall assume in writing, on the same terms and conditions as apply hereunder to the transferor, all of the duties and obligations of such transferor arising under this Regulatory Agreement from and after such sale or transfer. Such assumption shall be in form and substance acceptable to the City in its sole discretion.
- b. Any New Borrower shall be bound by the terms of this Regulatory Agreement to the same extent and on the same terms as the present Borrower is bound hereunder and shall execute an assumption of such obligations in form and substance acceptable to City as a condition precedent to such party's admission as a New Borrower.

7. Term of Agreement; Covenants Run with the Land. The covenants, conditions, restrictions and agreements set forth in this Regulatory Agreement (collectively, the "Obligations") shall be deemed to run with, bind and burden the Real Estate and the Project and shall be deemed to bind any New Borrower and any other future owners of the Real Estate and/or the Project and the holder of any legal, equitable or beneficial interest therein for the Affordability Period; provided, moreover, that if the date of the cancellation or repayment of the Note (the "Cancellation Date") is prior to the expiration date of the Affordability Period, the Obligations shall expire on the Cancellation Date, irrespective of whether the proceeds of the Loan are repaid voluntarily by Borrower or tendered by any party following an acceleration by City of the Note or enforcement by City of its remedies in connection with the Loan. The Borrower shall, if so requested by City, execute a written memorandum, prepared by City, which memorandum shall memorialize said date of Project completion and the foregoing Affordability Period. Any waiver by the City of its right to prepare or record any such memorandum and any failure by the Borrower to execute and deliver the same shall not affect the validity or enforceability of the Obligations.

It is hereby expressly acknowledged by Borrower that the undertaking of the Obligations by Borrower is given to induce City to make the Loan and that, notwithstanding that the Loan may be repaid prior to the expiration of the Affordability Period, the Borrower's undertaking to perform the obligations for the full Affordability

Period set forth in the previous paragraph is a condition precedent to the willingness of City to make the Loan.

8. Indemnification

- a. The Borrower hereby agrees to indemnify the City, its officers, agents, employees or servants against, and hold them harmless from, liabilities, claims, damages, losses and expenses, including, but not limited to, legal defense costs, attorneys' fees, settlements or judgments, whether by direct suit or from third parties, arising out of the Borrower's performance under this Regulatory Agreement, and/or the Loan Documents, or the work performed by a contractor in connection with the Project, in any claim or suit brought by a person or third party against the City, or its respective officers, agents, employees or servants, excepting any liability, claim, damage, loss and expense arising out of such other Party's gross negligence, willful misconduct or fraud.
- b. If a claim or suit is brought against the City, or its respective officers, agents, employees or servants, for which the Borrower is responsible pursuant to subsection (a) above, the Borrower shall defend, at the Borrower's cost and expense, any suit or claim, and shall pay any resulting claims, judgments, damages, losses, costs, expenses or settlements against the City, or its respective officers, agents, employees or servants.

9. Amendment. This Regulatory Agreement shall not be altered or amended except in a writing signed by the parties hereto.

10. Conflicts and Partial Invalidity. Borrower warrants that it has not executed, and shall not execute, any other agreement with provisions contradictory, or in opposition to, the provisions hereof and that, in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations set forth in such other agreement and supersede any other requirements in conflict therewith; provided, however, that to the extent this Regulatory Agreement conflicts with any provision or requirement set forth in the Development Agreement, Mortgage, Note, or any other Loan Document, as the case may be, the provisions of the Development Agreement, Mortgage and Note shall prevail and control. If any term, covenant, condition or provision of this Regulatory Agreement, or the application thereof to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Regulatory Agreement, or the application thereof to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, condition and provision of this Regulatory Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. Successors. Subject to the provision of Paragraph 6 hereof, this Regulatory Agreement shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest and

assigns; provided, however, that Borrower may not assign this Regulatory Agreement or any of its obligations hereunder, without the prior written approval of City.

12. Plurals, Gender and Captions. The use of the plural in this Regulatory Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders. The captions used in this Regulatory Agreement are used only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Regulatory Agreement.

13. Notices. Any notice, demand, request or other communication which any party may desire or may be required to give to any other party hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to City: City of Aurora
 Neighborhood Redevelopment Division
 51 E. Galena Blvd
 Aurora, Illinois 60505
 Attn: Manager

With a copy to: City of Aurora
 44 E. Downer Place
 Aurora, Illinois 60507-2067
 Attention: City Clerk

And: City of Aurora, Law Department
 5 E. Downer Place, Suite F
 Aurora, Illinois, 60507
 Attention: Corporation Counsel

And: Klein, Thorpe & Jenkins, Ltd.
 20 N. Wacker Drive, Suite 1660
 Chicago, Illinois 60606
 Attention: Michael A. Marrs/Gregory T. Smith

If to Borrower: Aurora Revitalization Owner LLC
 c/o The Community Builders, Inc.
 135 South LaSalle Street, Suite 3350
 Chicago, IL 60603
 Attention: Terri Hamilton Brown or Will Woodley

The Community Builders, Inc.
185 Dartmouth Street

Boston, MA 02116
Attention: General Counsel

With a copy to: Applegate & Thorne-Thomsen, P.C.
440 South LaSalle Street, Suite 1900
Chicago, IL 60605
Attention: Ben Applegate

And: U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, MO 63103
Attention: Director of Asset Management (LIHTC)
Project No. 25052

With a copy to: Lathrop Gage LLP
7701 Forsyth Boulevard, Suite 500
Clayton, MO 63105
Attention: Janice E. Hetland

And: BMO Harris Bank N.A.
115 S. LaSalle St., Floor 20W
Chicago, Illinois 60603
Attention: Tania Kadakia

With a copy to: Charity & Associates, P.C.
20 North Clark Street, Suite 1150
Chicago, Illinois 60602
Attention: Brandon Calvert, Esq.

14. Survival of Obligations. The Borrower's obligations, as set forth in this Regulatory Agreement, shall survive the disbursement of the Loan, and the Borrower shall continue to cooperate with City and furnish any documents, exhibits or records requested.

15. Construction. This Regulatory Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois.

16. Counterparts. This Regulatory Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Regulatory Agreement must be produced or exhibited, be the Regulatory Agreement, but all such counterparts shall constitute one and the same agreement.

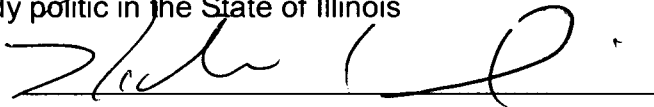
17. Limited Non-Recourse Obligation. Notwithstanding anything herein to the contrary, the indebtedness evidenced by the Notes shall be a non-recourse obligation of

Borrower and neither Borrower nor any managing member or investor member of Borrower nor any related or unrelated party shall have any personal liability for repayment of said indebtedness or any other amounts evidenced or secured by the Loan Documents, the sole recourse of the City or any subsequent holder of the Notes being the exercise of its rights against the Project (as defined in the Development Agreement) and any other collateral under the Loan Documents, including, without limitation (i) the Project and the rents, issues, profits and income therefrom, (ii) any funds or property held pursuant to any of the Loan Documents, (iii) insurance proceeds and condemnation awards paid or payable relative to the Project and (iv) the personal liability of any guarantor or indemnitor, to the extent of its guaranty or indemnity. Notwithstanding the foregoing, Borrower and each managing member of Borrower shall be jointly and severally liable for all liability, loss or damage to the City and any subsequent holder of the Note caused by or arising out of (a) any fraud or intentional misrepresentation by Borrower or any managing member of Borrower, (b) any waste involving the Project, or (c) Borrower's or any managing member's misapplication (in violation of any provisions of the loan Documents or otherwise) or insurance proceeds or condemnation awards in respect of the Project or any portion thereof (or any payment or settlements in lieu of either), or misapplication of revenues derived from the operation of the Project. Nothing contained in this section shall be construed to modify, limit or affect the personal liability of the parties under any guaranty or indemnity.

18. Waiver of Jury Trial. The parties waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with the Project, this Regulatory Agreement or any of the Loan Documents and agree that any such action or proceeding shall be tried before a court and not before a jury.

In Witness Whereof, the parties hereto have executed this Agreement on the date(s) recited below.

CITY OF AURORA,
a body politic in the State of Illinois

By: 

Its: Mayor

Attest: Wendy McCombidge
City Clerk

Date: November 16, 2017

BORROWER

Aurora Revitalization Owner LLC, an Illinois limited liability company

By: Aurora Revitalization MM LLC, an Illinois limited liability company, its managing member

By: _____
Name: _____
Title: _____

Date: _____, 2017

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 _____ of the City of Aurora, Illinois, 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 _____, he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of the City of Aurora, Illinois, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 20__.

Notary Public

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 _____ of Aurora Revitalization MM LLC, the managing member of Aurora Revitalization Owner LLC, , 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 _____, he/she signed and delivered the said instrument as his/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 _____, 20__.

Notary Public

Exhibit A

Legal Description and Property Address

Legal Description

[to come] in the City of Aurora, Kane County, Illinois.

Permanent Index Number

Property Address

_____, Aurora, IL 60505

Exhibit F

Equal Employment Certification

(Attached)

During the performance of the Agreement, the Developer agrees as follows:

1. The Developer will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, handicap or familial status. The Developer will take affirmative steps to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, national origin, handicap or familial status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms or compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
2. The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer; state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, national origin, handicap or familial status.
3. The Developer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
4. The Developer will comply with all provisions of Presidential Executive Order 11246 (Executive Order 11246) of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Developer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Developer 's non-compliance with the equal opportunity clauses of the Agreement or with any such rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Developer may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided by Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Developer shall include the provisions of paragraphs (1) through (7) of this **Exhibit F** in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of

Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Developer shall take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Developer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Developer may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit G

[Intentionally Omitted]

Exhibit H

Priority Interests

(Attached)

Priority Interests

1. Financing Party: Illinois Housing Development Authority ("IHDA")
Anticipated Amount: NA
Documentation: IHDA Low-Income Housing Tax Credit Extended Use Agreement, to be executed in 2017
2. Financing Party: BMO Harris Bank N.A..
Anticipated Amount: Approximately \$[13,719,348]
Documentation: Bridge and Construction Loans, Senior Construction Mortgage & Other Security Instruments to be executed in 2017
3. Financing Party: Aurora Revitalization Residential LLC (Seller Loan)
Anticipated Amount: \$3,800,000
Documentation: Mortgage, Regulatory Agreement & Other Security Instruments, to be executed in 2017
4. Financing Party: Aurora Revitalization Residential LLC (DTC P)
Proceeds
Anticipated Amount: \$[227,958]
Documentation: Mortgage, Regulatory Agreement & Other Security Instruments, to be executed in 2017
5. Financing Party: The Community Builders, Inc. (NSP funds)
Anticipated Amount: \$1,000,000
Documentation: Mortgage, Regulatory Agreement, Assignment of Leases and Rents & Other Security Instruments, to be executed in 2017

Exhibit I

Drug Free Workplace Certification

(Attached)

[Project Entity] certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about
 - i. The dangers of drug abuse in the workplace;
 - ii. The Developer's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);
4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will:
 - i. Abide by the terms of the statement; and
 - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
5. Notifying the City within ten (10) days after receiving notice under subparagraph (4)(ii) from an employee or otherwise receiving actual notice of such conviction;
6. Taking one of the following actions, within thirty (30) days of receiving notice under subparagraph (4)(ii), with respect to any employee who is so convicted:
 - i. Taking appropriate personnel action against such an employee, up to and including termination; or
 - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (1) through (6).

Signature

Name

Title

Date

Exhibit J

City's Affirmative Marketing Policy

(Attached)

**CITY OF AURORA
AFFIRMATIVE FAIR HOUSING MARKETING PLAN**

STATEMENT OF POLICY:

The City of Aurora ("City") has established this "Affirmative Fair Housing Marketing Plan" to ensure that the programs and projects with City funding employ a marketing plan that promotes fair housing and ensures outreach to all potentially eligible households, especially those least likely to apply for assistance.

The City's policy is to provide information and attract eligible persons to available housing without regard to race, color, national origin, sex, religion, familial status (persons with children under 18 years of age, including pregnant women), sexual orientation, or disability. The procedures followed are intended to further the objectives of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and Executive Order 11063, which prohibits discrimination in the sale, leasing, rent and other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

PROCEDURES:

Procedures are not required for tenant-based rental assistance (TBRA) recipients.

The City is committed to the goals of affirmative marketing that will be implemented through the following procedures:

- A. Providing equal service without regard to race, color, religion, sex, handicap, familial status, or national origin of any client, customer, sexual orientation, or resident of any community;
- B. Keeping informed about fair housing laws and practices;
- C. Informing clients and customers about their rights and responsibilities under the fair housing laws by providing verbal and written information;

D. Evaluating the effectiveness and compliance of all marketing as it relates to fair housing in conjunction with the City of Aurora Human Relations Commission;

E. Including the *Equal Opportunity* logo or slogan, and where applicable the accessibility logotype, in all ads, brochures, and written communications to owners and potential tenants;



F. Displaying the HUD's fair housing posters (at a minimum, English and Spanish versions) in rental offices or other appropriate locations;

G. Soliciting applications for vacant units from persons in the housing market who are least likely to apply for assistance without the benefit of special out-reach efforts; working with the local public housing authority and other service and housing agencies to distribute information to a wide and diversified population;

H. Maintaining documentation of all marketing efforts (such as copies of newspaper ads, memos of phone calls, copies of letters).

I. Maintaining a record of applicants for vacant units with a general profile of the applicant, how the applicant learned of the vacancy, the outcome of the application, and if rejected, why; maintaining this record for two years or through one compliance audit, whichever is the shorter period of time.

ASSESSMENT:

In conjunction with the annual on-site compliance reviews, the City will:

A. Review and evaluate records of affirmative marketing efforts (advertisements, flyers, and electronic media spots, etc.);

B. Evaluate outcomes and effectiveness of marketing efforts and make changes when needed.

C. Evaluate whether good faith efforts have attracted a diversified cross-section of the eligible population.

CORRECTIVE ACTIONS:

Failure to meet affirmative marketing requirements will result in the following corrective actions:

For failure to comply, the City will set a probationary period for compliance, not to exceed six months, during which time the City will provide more specific guidelines for compliance.

Further failure, to comply with the affirmative marketing requirements may result in the withdrawal of City funding.

Further failure, to take appropriate actions to correct discrepancies in affirmative marketing programs may result in steps to recover all invested City funds.

Exhibit K – Investor Loan Rider

LOAN RIDER **(Borrower's Investor Member Provisions)**

This Loan Rider (the "**Rider**") is attached to and made a part of that certain Development Agreement dated as of [_____], 2017 (the "**Development Agreement**") by and between Aurora Revitalization Owner LLC, an Illinois limited liability company (the "**Borrower**"), and the City of Aurora, Illinois, an Illinois home rule municipal corporation ("**Lender**"), and modifies the Development Agreement and all of the other documents entered into by Borrower in connection with the Loan (collectively, the "**Loan Documents**") respecting that certain \$600,000.00 mortgage loan from Lender (the "**Loan**"), all with respect to the development of a 76 unit multifamily residential development, situated in Aurora, Illinois and known as Aurora Arts Centre and Coulter Court Residences (collectively, the "**Project**"). The Borrower and Lender hereto agree that the following terms and agreements shall be part of and shall modify or supplement each of the Loan Documents, and shall prevail in the event of conflict or inconsistency between this Rider and the Loan Documents, or any of them:

1. **Non-recourse Obligation.** Payment and performance of the obligations set forth in the Loan Documents shall be non-recourse to Borrower and Borrower's members, and the Lender's sole recourse with respect to the Loan shall be the right to foreclose under the mortgage and other collateral forming part of the Loan Documents.

2. **Managing Member Change.** The withdrawal, removal, transfer and/or replacement of the managing member of Borrower pursuant to the terms of the Amended and Restated Operating Agreement of Borrower ("**Borrower's Operating Agreement**") shall not require the consent of Lender nor constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan; provided that Borrower agrees to notify the Lender of any proposed replacement managing member prior to replacement, and, upon replacement, shall notify the Lender of the name and contact information of the replacement managing member with reasonable promptness.

3. **Transfer of Investor Member Interests.** Nothing in the Loan Documents shall limit or restrict the ability of Borrower's investor member, U.S. Bancorp Community Development Corporation, its successors and assigns (the "**Investor Member**") to transfer, sell or assign its ownership interest in Borrower, from time to time, without the consent of or notice to Lender, provided that said Investor Member remains liable for payment of any then unpaid capital contributions to Borrower, as and when payable, as set forth in Borrower's Operating Agreement, notwithstanding any such transfer, sale or assignment. In particular, Lender hereby consents to any transfers, sales or assignments of membership interests in Borrower to any affiliate of the Investor Member or any entity in which the Investor Member, or an affiliate, is the manager or managing member and agrees that such transfers shall not constitute a default under the Loan Documents.

4. **Replacement of Management Agent.** The Lender acknowledges that Borrower's Investor Member has the right, under the Borrower's Operating Agreement, to direct the managing member to remove the Project's property management agent. Borrower agrees to give Lender notice of the proposed replacement property management agent, and the Lender agrees to consent to same, assuming that such replacement property management agent is acceptable to Borrower's Investor Member and has experience in managing projects occupied by low-income households pursuant to Section 42 of the Internal Revenue Code.

5. **Notice.** All notices to Borrower's Investor Member shall be sent in accordance with the procedures for delivering notices set forth in the Loan Documents to the following address or such alternate or additional contact names and/or addresses of which Lender is so notified in writing by the Investor Member:

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
Attn.: Director of LIHTC Asset Management
USB Project No. 25052
Phone: (314) 335-2600
Fax: (314) 335-2601

With a copy to:

Lathrop Gage LLP
Pierre Laclede Center
7701 Forsyth Boulevard, Suite 500
St. Louis, MO 63105
Attn.: Janice E. Hetland, Esq.
Phone: (314) 613-2800
Fax: (314) 613-2801

6. **Notice and Cure Rights.** The Lender agrees to give the Investor Member written notice of any and all defaults by the Borrower under the Loan Documents, and an opportunity, at the Investor Member's option, to cause the cure of such default within the cure periods set forth below, prior to exercising any remedies under the Loan Documents. The Lender agrees that the Investor Member will have ten (10) days after the Investor Member's receipt of notice of such default to cure, or cause the cure of a monetary default under the Loan Documents, and thirty (30) days (or such longer period as is set forth in the Loan Documents) after the Investor Member's receipt of such notice to cure any non-monetary defaults under the Loan Documents, or, as to non-monetary defaults, such longer period as is reasonably necessary for the Investor Member to effect a cure, provided that curative action is commenced within the above stated cure period and diligently

prosecuted, including, without limitation, such time as may be necessary to remove Borrower's managing member, if necessary to effect a cure. The Lender agrees to accept cure by the Investor Member as if such cure were made by Borrower.

7. **Insurance and Condemnation Proceeds.** The Lender agrees that insurance and condemnation proceeds shall be used to rebuild or restore the Project, subject to the prior rights of any and all senior lenders, which rights shall prevail in the event of inconsistency or conflict.

8. **Partial Subordination to Section 42 Extended Use Agreement.** Notwithstanding anything in the Loan Documents to the contrary, if the Lender takes title to the Project through foreclosure or deed in lieu of foreclosure, the Project shall remain subject to the provisions of Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986 ("**Code**") or any similar successor provision of the Code. This section shall apply notwithstanding the order of recording of any of the Loan Documents and the Extended Use Agreement (as such term is defined in the Borrower's Operating Agreement), executed in connection with the allocation of federal low income housing tax credits to the Borrower for the Project pursuant to Section 42 of the Code.

9. **Debt Service Coverage Requirements.** So long as Borrower is current on all debt service payments payable under the Loan, the failure to meet any debt service coverage requirements at any time or times shall not constitute a default under the Loan, nor prohibit any distribution or payment to Borrower's members or to Affiliates of Borrower or its members.

10. **Force Majeure.** There shall be no default under the Loan Documents for construction or rehabilitation delays beyond the reasonable control of the Borrower.

11. **Purchase Rights.** The Lender consents to those purchase options, put rights and rights of first refusal in favor of the managing member of Borrower or its designee which are set forth in Borrower's Operating Agreement, and agrees that transfer of title to the Project in accordance therewith shall not constitute a default under the Loan Documents.

12. **Lender Approvals.** Lender agrees that all approvals and consents of the Lender under the Loan Documents shall not be unreasonably withheld, delayed or conditioned. Further, amendments to Borrower's Operating Agreement entered into in order to effect transfers or assignments of the Investor Member's or the managing member's interest pursuant to Sections 2, 3 and 11 above shall not require the consent or approval of the Lender.

13. **Third Party Beneficiary.** Borrower's Investor Member, and its successors and assigns, is a third party beneficiary of the rights of Borrower under the Loan Documents, as modified by this Rider and has the right to directly enforce such rights.

14. **Loan Sale or Assignment**. Lender agrees that it shall not assign or transfer the Loan (or any interest therein) to any third party without the prior written consent of the Borrower and the Borrower's Investor Member.