

**FIRST OMNIBUS AMENDMENT, ASSIGNMENT AND TERMINATION  
(100 Oak Avenue and 631 South Lake Street – HOME Loan)**

This **FIRST OMNIBUS AMENDMENT, ASSIGNMENT AND TERMINATION** (this “**Amendment**”) is made and entered into as of \_\_\_\_\_, 2023 (the “**Effective Date**”), by and among **VISIONARY VENTURES NFP CORPORATION**, an Illinois not-for-profit corporation (“**Sponsor**”), **FOX VALLEY APARTMENTS, LP**, an Illinois limited partnership (“**Owner**”) and the **CITY OF AURORA, ILLINOIS**, an Illinois home rule municipal corporation (“**City**”).

**RECITALS**

- A. Sponsor, Owner and City are parties to that certain Development Agreement among the City, Sponsor, Owner and the West Aurora School District (“**School District**”) dated as of June 1, 2022 (the “**Development Agreement**”) pursuant to which the City has made a loan under the HOME Investment Partnerships Act in the amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000) to the Sponsor (“**Original HOME Loan**”), evidenced by that certain Note made by Sponsor for the benefit of City in the amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000) dated June 9, 2022 (“**Original HOME Note**”) for the purpose of rehabilitating and constructing an affordable housing development at the properties located at 100 Oak Avenue and 631 South Lake Street and more particularly described on Exhibit A attached hereto (the “**Property**”)
- B. In connection with the Development Agreement and the Original HOME Loan, the Sponsor, Owner and City entered into that certain Regulatory and Land Use Restriction Agreement (HOME) dated as of June 9, 2022 and recorded at Doc No. [2022K031034] (“**HOME Regulatory Agreement**”).
- C. Sponsor has loaned the proceeds of the Original HOME Loan to Owner (the “**Sponsor Loan**”) as evidenced by that certain Promissory Note (Sponsor Loan) made by Owner for the benefit of Sponsor in the amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000) dated June 9, 2022 (the “**Sponsor Note**”), which is secured by that certain Junior Mortgage, Assignment of Rents and Security Agreement (Sponsor Loan) made by Owner for the benefit of Sponsor, dated June 9, 2022, and recorded at Doc No. [2022K031038] (“**Sponsor Mortgage**”).
- D. Sponsor and City entered into that certain Collateral Assignment of Note and Mortgage (HOME) dated June 9, 2022, and recorded at Doc No. [2022K031039] (“**Collateral Assignment**”, and collectively with the Sponsor Note, Sponsor Mortgage, HOME Regulatory Agreement, Development Agreement, and Original HOME Note, the “**Documents**”), pursuant to which Sponsor collaterally assigned to the City all of Sponsor’s interest in the Sponsor Note and Sponsor Mortgage to secure the Sponsor’s and Owner’s obligations, as applicable, under the Original HOME Note, the HOME Regulatory Agreement and the Development Agreement.

- E. As of the Effective Date, the parties have agreed to make certain changes to the structure of the Documents so that the proceeds of the Original HOME Loan will be a direct loan from City to Owner and Sponsor's obligations under the Documents will be terminated as set forth herein.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the agreement and undertakings of Owner, Sponsor and City, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Termination of Original HOME Note.** The Original HOME Note is hereby terminated.
2. **Termination of Collateral Assignment.** The Collateral Assignment is hereby terminated.
3. **Assignment of Sponsor Note and Sponsor Mortgage.**
  - a. Sponsor hereby grants, assigns, conveys and transfers, without recourse, representation or warranty to City, except as expressly set forth in this Amendment, and its successors and assigns, all right, title and interest of Sponsor in and to the Sponsor Note and Sponsor Mortgage.
  - b. City hereby assumes the obligations of Sponsor from and after the date hereof with respect to the Sponsor Note and Sponsor Mortgage.
  - c. Representations of Sponsor:
    - i. the Sponsor is the sole owner and holder of the Sponsor Note;
    - ii. no portion of the Sponsor Note have been previously sold, assigned or pledged by Sponsor;
    - iii. the Sponsor has the full right and authority to assign the Sponsor Note to the City;
    - iv. as of the date hereof, the outstanding principal indebtedness under the Sponsor Note held by the Sponsor is Two Million Nine Hundred Thousand Dollars (\$2,900,000); and
4. **Amendment to Sponsor Note.** The Sponsor Note is hereby amended as follows:
  - a. Section 2 is hereby deleted and replaced with:

“Payments.

The principal amount of this Promissory Note (the "Note") shall be paid upon the earlier to occur (the "Maturity Date") of (i) June 9, 2054; (ii) the sale or transfer of the Property (defined below) to an entity which is not an affiliate of the Borrower (other than West Aurora School District 129, an Illinois public school district); (iii) (30) years from the closeout date of the activity in the Integrated Disbursement and Information System (IDIS) or (iiii) if, in violation of HOME Regulations, the Fourteen (14) HOME units on the Property cease to be maintained and operated as affordable housing for households whose incomes at initial occupancy are at or below Sixty Percent (60%) of the Chicago-Joliet-Naperville Area Median Income and Low HOME Program Units are occupied by a family whose income, at the time of initial occupancy, exceeds thirty percent (30%) of the Chicago-Joliet-Naperville Area Median Income, as established by the United States Department of Housing and Urban Development. Except as set forth herein, all regular payments of outstanding principal and accrued interest will be deferred until the Maturity Date and shall be due and payable on the Maturity Date.”

- b. The Sponsor Note and Sponsor Mortgage shall be subject to all of the terms and conditions contained in the Development Agreement. If the Property is no longer used for the purposes stated in the Development Agreement, the principal under the Sponsor Note is due within 30 days of such change of use unless the resulting default is cured within such 30-day period, as may be extended. Owner, as Borrower, must notify City, as Lender, of any change in usage immediately. If such resulting default cannot reasonably be cured in such 30-day period, the cure period shall be extended an additional 60 days.
  - c. All payments under the Sponsor Note shall be sent to the City of Aurora, Community Development Division, Attn: HOME-2021-02, or to such other place required by City.
5. **Amendment to Sponsor Mortgage.** The Sponsor Mortgage is hereby amended as follows as of the date hereof:
- a. The following covenants shall be added as separate and independent covenants of Owner under the Sponsor Mortgage and secured by such Sponsor Mortgage:  
  
Owner’s performance of its obligations, beyond applicable notice and cure periods, under each of the Development Agreement and the HOME Regulatory Agreement and the Sponsor’s performance of its obligations, beyond applicable notice and cure periods to the School District under the Development Agreement.
6. **Omnibus Notice Provisions.** The Lender notice address in the Sponsor Note and Sponsor Mortgage are hereby deleted and replaced with:

City of Aurora  
Community Development Division  
44 E. Downer Place  
Aurora, Illinois 60505  
Attn: Community Development Manager

7. **Amendment to HOME Regulatory Agreement.** The HOME Regulatory Agreement is hereby amended as follows as of the date hereof:
  - a. All references to “Borrower” or “Developer” shall mean Fox Valley Apartments, LP, an Illinois limited partnership. Any and all obligations and liability of Sponsor under the HOME Regulatory Agreement are hereby terminated.
  - b. All references to the Collateral Assignment are hereby deleted.
8. **Amendment to Development Agreement.** The Development Agreement is hereby amended as follows as of the date hereof:
  - a. The definition of “Developer” is hereby amended and restated to mean “Fox Valley Apartments, LP, an Illinois limited partnership”.
  - b. Any and all obligations of Sponsor under the Development Agreement are hereby terminated, provided, however, any obligations of Sponsor to the School District in connection with the CDBG Loan or CDBG Program set forth in the Development Agreement shall remain in full force in effect.
9. **Reaffirmation of Representations and Warranties.** Except as otherwise set forth in this Amendment, Owner represents and warrants that it is in full compliance with all terms, conditions, covenants, agreements, stipulations, representations and warranties under the Documents, as amended hereby.
10. **Continuation of Documents.** Except as specifically modified and/or terminated herein, the Documents shall remain in full force and effect in all respects according to its original terms, covenants and conditions, and nothing in this Amendment shall affect or impair any rights and powers which lenders may have thereunder.
11. **Counterparts.** This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
12. **Successors and Assigns.** This Amendment is binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

**Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Illinois without giving effect to the conflict of laws thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

OWNER:

Fox Valley Apartments, LP,  
an Illinois limited partnership

By: FVA GP, LLC,  
an Illinois limited liability company,  
its general partner

By: VV Fox Valley, LLC, an Illinois limited liability  
company, its managing member

By: Visionary Ventures NFP Corporation,  
an Illinois not-for-profit corporation,  
its member

By: \_\_\_\_\_  
Name: Shelly Tucciarelli  
Title: Executive Director

SPONSOR:

VISIONARY VENTURES NFP CORPORATION,  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Name: Shelly Tucciarelli  
Title: Executive Director

CITY:

City of Aurora, an Illinois home rule municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ILLINOIS                    )  
  )       SS  
COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, do hereby certify that Shelly Tucciarelli, the Executive Director of Visionary Ventures NFP Corporation, the sole member of VV Fox Valley, LLC, the managing member of FVA GP, LLC, the general partner of Fox Valley Apartments, LP, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that she signed and delivered such instrument as her own free and voluntary act, and as the free and voluntary act of the company as member of and on behalf of Fox Valley Apartments, LP, all for the uses and purposes set forth therein.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

My commission expires: \_\_\_\_\_

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

STATE OF ILLINOIS                    )  
  )       SS  
COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, do hereby certify that Shelly Tucciarelli, the Executive Director of Visionary Ventures NFP Corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that she signed and delivered such instrument as her own free and voluntary act, and as the free and voluntary act of Visionary Ventures NFP Corporation, all for the uses and purposes set forth therein.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

My commission expires: \_\_\_\_\_

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

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF \_\_\_\_\_)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that \_\_\_\_\_, personally known to me to be a \_\_\_\_\_ of the City of Aurora (the "City"), 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 acknowledged that he/she signed and delivered the said instrument in his/her capacity as such \_\_\_\_\_ of the City, as his/her free and voluntary act and deed and as the free and voluntary act and deed of the City, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

(SEAL)

Notary Public

My Commission Expires: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



EXHIBIT A

*[Legal Description]*

PARCEL 1

LOT 1 IN THE FINAL PLAT FOR FOX VALLEY APARTMENTS-TODD SCHOOL SUBDIVISION BEING A RESUBDIVISION OF LOTS 1 THROUGH 4 INCLUSIVE, IN BLOCK 8 OF GALES ADDITION TO WEST AURORA, IN THE CITY OF AURORA, KANE COUNTY, ILLINOIS.

PIN: 15-22-159-001

COMMON ADDRESS: 100 OAK AVENUE, AURORA IL 60506

PARCEL 2:

LOT 1 IN THE FINAL PLAT FOR FOX VALLEY APARTMENTS-LINCOLN SCHOOL SUBDIVISION BEING A RESUBDIVISION OF LOTS 5, 6, 7, 8, AND 9 IN BLOCK 2 OF WAGNER'S SECOND ADDITION TO AURORA, IN THE CITY OF AURORA, KANE COUNTY, ILLINOIS

PINS: 15-28-129-008 AND 15-28-129-025

COMMON ADDRESS: 631 AND 641 LAKE STREET, AURORA, IL 60506