

**DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF AURORA AND AURORA ST. CHARLES SENIOR LIVING L.P.**

This Development Agreement (“Agreement”) is entered into as of the _____ day of _____, 2015 (“Effective Date”), by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation (“City”) and Aurora St. Charles Senior Living L.P., an Illinois limited partnership (“Developer”). (The City and the Developer are sometimes referred to herein individually as a “Party” or collectively as the “Parties”).

R E C I T A L S

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

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

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

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

WHEREAS, the City applied to the United States Department of Housing and Urban Development (“HUD”) for said HOME funds to be used for the creation of affordable housing for low-income households within the City; and

WHEREAS, HUD then granted to the City certain HOME funds, which the City has committed to use to further the availability of affordable rental housing for low-income households within the City; and

WHEREAS, the City desires to further the purposes of HOME by facilitating the rehabilitation and operation of the 60-unit residential project, known as “Aurora St. Charles Senior Living”, into affordable rental housing for low income senior citizen occupants (55 years of age or older) in accordance with the terms of this Agreement (“Project”), by loaning certain HOME funds to the Developer to assist in the residential rehabilitation/construction specifically of six (6) one bedroom units and six (6) two bedroom units at the Project’s real property location commonly known as 400 E. New York St., Aurora, Illinois 60505 (“Property”) as set forth in **Exhibit A** (“Project Area”) attached hereto and made a part hereof.

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 Jeffrey Rappin, Stephen Rappin and Larry Pusateri, 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 VII.H. below.

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

Exhibit A – Project Area;

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 – Environmental Review Process;

Exhibit H – Priority Interests;

Exhibit I – Drug Free Workplace Certification;

Exhibit J – Amended and Restated Limited Partnership Agreement of the Developer;

Exhibit K – Property Description;

Exhibit L – City's Affirmative Marketing Policy;

Exhibit M – Rehabilitation Plan; and

Exhibit N – Tenant Selection Plan

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:

1. **Proof of Financing.** As required by 24 C.F.R. § 92.504(c)(2), the Developer as of the date hereof (“Financing Deadline”) has submitted to the City executed letters of intent, and/or executed term sheets, from lenders evidencing firm financial lending commitments to the Developer for the Project which establish, to the City’s satisfaction, that the Developer has adequate financial and economic resources available to implement and complete Developer’s obligations set forth in this Agreement (“Financing Commitments”).

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

The Developer shall:

- a. Acquire and rehabilitate/construct on the Property (as defined in Subsection II.A.3. below) the Project, all in accordance with this Agreement, on or before twenty-four (24) months of the Effective Date.
- b. Within thirty (30) days after the Effective Date (“Rehabilitation Plan Deadline”), submit any revisions to the Rehabilitation Plan for the Property (“Rehabilitation Plan”) to the City, including any modifications to the complete scope of work for the rehabilitation/construction of the Property as set forth in **Exhibit M**. The Rehabilitation Plan and the rehabilitation/construction of the Property shall meet or exceed the property standards, building code standards and the energy efficiency standards set forth in **Exhibit B**. The City shall review the Rehabilitation Plan and any modifications submitted by the Developer and provide a response as set forth in Subsection II.A.14.
- c. **Completion of Rehabilitation.** The Developer shall complete rehabilitation of the Property in accordance with the Rehabilitation Plan, and receive a certificate of occupancy from the City for the Property, on or before twenty-four (24) months from the Effective Date.

3. **Timing of Obligations.** Within five (5) days of receipt of a Notice to Proceed (as defined in Subsection II.A.3 below) for the Project:

- a. 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; and to the Rehabilitation Plan for the Project subject to the Notice to Proceed.
- b. 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. 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; and

to the Rehabilitation Plan for the Property subject to the Notice to Proceed.]

- d. Simultaneous with taking title to the Property, record against title to the Property, with the Kane County Recorder's office at Developer's cost, the executed Regulatory Agreement and Mortgage, such that the Regulatory Agreement and Mortgage are given the priority set forth in Subsection III.D. below.
- e. Within twelve (12) months of completing rehabilitation of the Property as evidenced by a certificate of occupancy, have all dwelling units in the Property inhabited by eligible tenants, as eligibility is set forth in Section 3(a) of the executed and recorded Regulatory Agreement for the Property. Preference in the selection of residents to occupy a unit shall be given, to the extent permitted by law, to senior veteran referrals and to qualifying former senior residents on the Aurora Housing Authority waitlist and to senior veteran referrals, including, but not limited to, former residents of the Jericho Circle development.

4. **Payment Requirements.** When submitting a Payment Request 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 of at least equal to the Rehabilitation Funds for purposes of rehabilitation of the Property, (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 subject to: (a) any evaluation of such work as a functioning project upon substantial completion, (b) the results of any subsequent tests permitted by the subcontract, and (c) any defects or deficiencies not readily apparent upon inspection of the work; and
- b. For final payment on the rehabilitation of the Property and all dwelling units therein, all of the above noted certifications, as well as a certification that all other applicable laws and regulations have been met or exceeded.

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

5. Senior Living Requirement. For thirty (30) years from the date (as set forth in the Note) that the twelve (12) units financed by the City are available for rent and placed in service ("PIS Date") ("Affordability Term"), Developer shall limit occupancy of these se twelve (12) HOME units on the Property to occupants 55 years of age or older as established in the Developer's Tenant Selection Plan attached as **Exhibit N** with 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 Illinois Housing Development Authority ("IHDA") Low-Income Housing Extended Use Agreement between IHDA and Developer ("Extended Use") terminate, and (ii) the Developer is no longer receiving a "Project Based Section 8" subsidy ("Rental Subsidy"), 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 subject to the right of the senior lenders to foreclose. Pursuant to 24 C.F.R. § 92.254 (a)(5)(i)(A), the Affordability Term also will terminate upon foreclosure or a deed in lieu thereof.

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 twelve (12) HOME 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 twelve (12) HOME units never have been leased within eighteen months of receiving a certificate of occupancy, immediate repayment of the Paid Commitment by the Developer to the City shall be made by Developer.
- c. The Developer shall repay the City the Paid Commitment by a balloon payment to be made not less than thirty (30) years from the PIS Date ("Repayment Term").
- 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 of One Percent (1%).
- f. ~~The Developer shall repay the City the Paid Commitment in the priority set forth in the "Amended and Restated Operating~~

~~Agreement” of the Developer (“Operating Agreement”), which as of the Effective Date has not been executed. The Developer shall submit a proposed Operating Agreement to the City prior to the commencement of Developer’s obligation to repay the City pursuant to Subsection which Operating Agreement is subject to the City’s approval prior to execution by the Developer. Upon approval by the City, and execution by the Developer, the Operating Agreement shall be attached to this Agreement as **Exhibit J**.~~

7. Further Assistance and Corrective Instruments.

- a. The Developer shall timely provide the City with such additional documentation and/or information which the City determines, in its sole discretion, is necessary to determine whether 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.

8. Meetings. The Developer shall meet with the Corporate Authorities of the City, and City staff, and make presentations to the Corporate Authorities of the City and City staff as reasonably requested by the City, in order to keep the City apprised of 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 Property above the Paid Commitment. The Developer shall be solely responsible for the costs of rehabilitation and operation of the Project Property.
- b. The Paid Commitment shall not exceed the Project Commitment (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 Property.

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 partnership 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 or its 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 Developer shall not commence work under the Agreement until it has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the insurance company, written or countersigned by an authorized Illinois State agency, shall be filed with the City for review and approval. 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.

- a. For fire and casualty insurance, coverages in an amount no less than the estimated fair market value of the Rehabilitated Property upon completion of the Project, and with sufficient business interruption coverage.
- b. For liability insurance, coverages in amounts per incident of not less than One Million and No/100 Dollars (\$1,000,000.00) for injury to one (1) person, Two Million and No/100 Dollars (\$2,000,000.00) for injury to more than one (1) person, One Million and No/100 Dollars (\$1,000,000.00) for property damage, and a Five Million and No/100 Dollars (\$5,000,000.00) umbrella policy, and with sufficient business interruption coverage.

The City, and its elected officials, officers, agents, and employees ("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 Project.

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 Project, comply with the provisions of 42 U.S.C. § 3535 and 24 C.F.R. §§ 135.1-135.92, by making efforts to offer training and employment opportunities to low and very low income residents of the Project area.

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

15. Housing Choice Voucher Eligibility. The Developer shall ensure that the Rehabilitated Property meets 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 Project in substantial conformance with all applicable Federal, State, and City laws, rules, ordinances and regulations, including but not limited to the HOME, Federal Register Notice, Vol. 73, No. 194, 24 C.F.R. Part 570,. All work with respect to the Project shall conform to all applicable Federal, State, and City laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the City, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement. 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 an Illinois limited partnership, duly organized and existing under the laws of the State of Illinois, qualified to do business in the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. 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 any of its partners or venturers is now a party or by which Developer or any of its related parties, partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party, or any of its partners or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party, any of its partners or any of its venturers is bound.
- c. Developer covenants that no officer, member, manager, stockholder, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the City, or any other person connected with the City, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the City.
- d. Concurrently with execution of this Agreement, Developer shall disclose to the City the names, addresses and ownership interests

of all persons that comprise Developer.

- e. Developer has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.
- f. Developer is not delinquent in payment of any taxes to the Illinois Department of Revenue.

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 thirty (30) 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 following funds for the Project, subject to the terms of this Agreement:

1. Three Hundred Ninety-Two Thousand and Three Hundred and Four and 74/100 Dollars (\$392,304.74) of 2014 HOME funds ("HOME Commitment") received by the City; and
2. One Hundred Seven Thousand and Six Hundred and Ninety-five and 26/100 Dollars (\$107,695.26) of 2015 HOME funds ("HOME Commitment") received by the City.

Together, the 2014 and 2015 HOME Commitments total Five Hundred Thousand and 00/100 Dollars (\$500,000.00) and are the "Project Commitment."

3. The Developer understands and acknowledges that the Project Commitment is to be received by the City from HUD, to be used by the Developer for the rehabilitation/construction of low-income rental housing; that the funds are administered by the City, and that the City's obligation to provide any of the Project Commitment to the Developer is dependent upon the availability of said Project Funds relative to this transaction. Accordingly, it is agreed that the City's obligations to provide funds for the Project are expressly conditioned upon the availability of the Project Funds and Developer's receipt of any and all approvals required from City for the disbursement of said funds relative to this transaction by the deadlines set forth in this Agreement.

B. Rehabilitation of Properties.

1. The City shall, within thirty (30) business days of receipt of a Rehabilitation Plan for the Property:

- a. Review the Rehabilitation Plan for the Project Property, and the attachments thereto, and determine whether the Plan for the Project Property, and the attachments thereto, meet the requirements of this Agreement.
- b. If the Rehabilitation Plan for the Project Property, and the attachments thereto, meet the requirements of this Agreement:
 - i. Initiate the environmental review process (“Environmental Review Process”) set forth in **Exhibit G** attached hereto and made a part hereof, and those additional environmental reviews which the City deems necessary.
 - ii. If the City obtains clearance for the Proposed Property after completion of the Environmental Review Process, issue a written notice to proceed (“Notice to Proceed”).
- c. If the Rehabilitation Plan for the Proposed Property, or the attachments thereto, do not meet the requirements of this Agreement for any reason, including, but not limited to, failure of the City to obtain clearance for the Property after the Environmental Review Process, notify the Developer in writing of the deficiencies in the Rehabilitation Plan for the Property, the attachments thereto, or the Environmental Review Process, and permit the Developer to submit one (1) amended Rehabilitation Plan for the Property that meets the requirements of this Agreement within an additional five (5) days of the City giving notice of the deficiencies.

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

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 Project, 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 of Project Funds shall be a loan to the Developer subject to the repayment obligations of 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 one (1) amended Payment Plan (for each request) for the Property 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 limited to the availability of HOME funds held by the City.
3. 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 Project, or in the event the Developer obtains additional debt financing after the Effective Date relative to the Project. The Developer shall notify the City in writing if the Developer seeks to refinance its debt relative to the Project, within ten (10) days of the Developer submitting an

application to refinance its debt relative to the Project.

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

Beginning on the 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 Project Property, on the following terms.

- a. If the Developer desires to sell all or part of the Project Property, the Developer shall first offer the Property to the City, who shall have the right to purchase the Property pursuant to the terms of said offer. In the event that the City does not purchase the Property and the Developer obtains an offer from a third party to purchase the Property for less than Ninety Percent (90%) of the price offered to the City, then the City shall have the right to purchase the Property for the price agreed to with said third party.
- b. If the Developer desires to sell the Property and receives from a third party a good faith written purchase offer for the Project 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 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 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 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 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 the senior construction mortgage of BMO Harris Bank N.A. referenced in **Exhibit H**.

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 Project 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;
 8. The Age Discrimination Act of 1975, 42 U.S.C. § 6101, *et seq.*, and implementing regulations in 24 CFR Part 146; and
 9. HOME regulations, including but not limited to, 24 C.F.R. § 29.504, *et seq.*
- B. **No Discrimination.** The Project shall be conducted and administered by the Developer in compliance with Section 109 of the 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 Project.
- 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. **Bid Specifications.** [\[Comment: We request that this section be removed. Pursuant to 24 C.F.R. § 92.254, the HOME investment partnerships program does not require a bidding process, and the Developer already participated in a](#)

[competitive process to receive the low income housing tax credits.](#) The Developer's bid specifications and/or work write-ups ("Bid Specifications") shall include a clear and accurate description of the technical requirements for the material, product or service to be procured (such descriptions shall not contain features which unduly restrict competition); requirements which the bidder/offer or must fulfill and all other factors to be used in evaluating bids; a description, whenever practicable, of technical requirements in terms of functions to be performed, including the range of acceptable characteristics or minimum acceptable standards; specific features of "brand name or equal" descriptions that bidders are required to meet; acceptance to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement; preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

1. The Developer shall submit the bid specifications or work write-ups and plans to the City for approval prior to any advertising or bid solicitation.
2. The Developer shall include in any invitation for bids or work write-up being used to solicit bids, the statement "Minorities and women contractors are encouraged to submit bids." Developer shall send an invitation to bid to the Minority Business Enterprise ("MBE") and Woman-owned Business Enterprise ("WBE") firms currently listed with the City, as appropriate for the type of work to be done.
3. If sealed bids are required, all bids will be publicly opened at the time and place prescribed in the invitation for bids.
4. If sealed bids are required, the Developer shall provide the City with a copy of the classified advertisements and the results from the bid opening.
5. The contract award will be made in writing to the lowest qualified responsive and responsible bidder that meets specifications. Any or all bids may be rejected, if there is reason to believe that the low bidder will be unable to complete the project in accordance with the Bid Specifications, including, but not limited to, the following reasons: contractor has been debarred by the U.S. government from working on Federally-funded projects; contractor is unable to furnish any required bond; contractor has a poor record of past performance; or contractor's bid is unusually low in relation to other bids and contractor is not able to document how it will be able to meet the Bid Specifications for the amount bid.
6. Except as otherwise required by law, ordinance, or regulation, Developer may follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, except for contracts or subcontracts exceeding One Hundred Thousand and No/100 Dollars (\$100,000.00). Such contracts

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

7. The Developer shall provide the City with copies of all executed contracts for the Project.
- G. **No Conflict of Interest.** In the acquisition and disposition of real property and the provision of assistance, in accordance with 24 C.F.R. § 570.611, no person who exercises or has exercised any functions or responsibilities with respect to HOME activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from an HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to an HOME-assisted activity, or with respect to the proceeds of the HOME-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. This applies to any person who is an employee, agent, consultant, or officer of the Developer.
- H. **No Prohibited Political Activities.** The Developer agrees that to the best of its knowledge, neither the Project 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 Project Property 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 controlling interest in the Developer or the entity managing the Project, 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 Partnership Agreement of Developer, attached as **Exhibit J**, nor the withdrawal, replacement, and/or addition of any of its limited partners or its partners or members, 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 Project.

- E. **Audit.** The Developer shall, each year as long as the Project remains in effect, complete an audit of the Project, conducted by an independent Certified Public Accountant, and shall submit a copy of the audit report to City within six (6) months of the close of Developer's year end.
- F. **Proof of Compliance.** The Developer shall submit to the City all required information to show compliance with applicable Federal, State, and City laws, rules and regulations, as specified in this Agreement, including but not limited to:
1. Its marketing plan, which plan must be in compliance with 24 C.F.R. § 92.351, as required by 24 C.F.R. § 92.504(c)(2)(v), and with the City's affirmative marketing policy attached as **Exhibit L**;
 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; 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 Project. The Developer shall provide Progress Reports after the Effective Date, and shall continue to provide such Progress Reports throughout the ~~term of this Agreement~~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 Project is complete: documentation of all activities undertaken in connection with Developer's marketing plan.
 2. For as long as Developer owns a Property and for five (5) years thereafter: all financial records pertaining to the rehabilitation, construction, and maintenance of the Property.
 3. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records

must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five year period, whichever is later.

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

VIII. REMEDIES.

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

the City harmless from any requirement to repay to HUD the Project Commitment received by Developer for this Project or penalties and expenses, including attorneys' fees and other costs of litigation, resulting from such action or omission by the Developer.

- B. **Notice of Claim.** In the event HUD, or any other Federal agency, makes any claim which would give rise to invoking the remedy provisions set forth in this Section VI., 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 other than the HOME funds subject to this Agreement, 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 Project, as a result of any alleged violation 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 alleged breach.
- E. **Indemnification and Hold Harmless.** To the fullest extent allowed by law, the Developer shall assume the defense of and shall pay, indemnify, and hold harmless the City, its designees, officers, employees, and agents from all suits, actions, claims, mechanics' liens, demands, damages, losses, expenses, and costs of every kind and description to which the City, its designees, and its employees may be subject by reason of any act or omission of Developer, its agents or employees, in undertaking and performing under this Agreement. The Developer's indemnification obligation hereunder shall include the payment of the City's reasonable attorney's fees, expert witness fees, litigation costs and court costs. The City shall have its choice of counsel, and the authority to direct its own defense.
- F. **No Waiver by Delay or Otherwise.** Any delay by the City and/or 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 be considered or treated as a waiver of the rights by the waiving City of any future default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

- G. **Rights and Remedies Cumulative.** The rights and remedies of the City and 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 the Developer breaches this Agreement and the City 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 Developer shall pay, on demand, the City's reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action.
- I. **No Environmental Representations or Warranties by City.** The City makes no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Project Area of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Project Area as well as any activity claimed to have been undertaken on or in the vicinity of the Project Area, that would cause or contribute to causing (1) a property in the Project Area to become a treatment, storage or disposal facility within the meaning of, or otherwise bring a property in the Project Area within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.*, or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from a property in the Project Area, within the meaning of, or otherwise bring a property in the Project Area within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would

require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, or any similar State law or local ordinance. Further, the City makes no warranties or representations regarding, nor does the City indemnify 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 Project Area, of any substances or conditions in or on a property the Project Area, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The City makes no representations or warranties regarding the existence of any above ground or underground tanks in the Project Area, or whether any above or underground tanks have been located under, in the Project Area have subsequently been removed or filled.

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

- K.** **Right to Cure by Lender or Limited Partner.** 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 Borrower's first mortgage lender ("Lender") and Borrower's limited partner ("Limited Partner") in accordance with this Section VII.K and the Lender and Limited Partner 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 Limited Partner shall have such additional cure rights as follows:

(a) Notwithstanding the provisions of this Agreement regarding Developer's 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 cure (each such failure being a "Personal Developer Default"), the Lender and/or Limited Partner shall provide written notice to the City within 30 days of receipt of notice of such Personal Developer Default stating that it shall cure 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 Project. Upon receipt by the City of such notice from the Lender or the Limited Partner, as applicable, the cure period shall be extended for 90 days.

(b) If Developer's failure to perform involves any non-monetary covenant and such non-monetary default is not reasonably capable of being cured by the Lender or the Limited Partner within the 90 day cure period provided above, such period shall be extended, if possession of the Project is necessary to effect such cure, provided that the party seeking such cure must (i) have begun to cure such default within the applicable cure period and continues diligently to pursue

such cure and (ii) the party seeking 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. The Developer acknowledges that HUD may from time to time issue updated guidance regarding the HOME program that may require amendment of this Agreement, and agrees to cooperate with the City in making such an amendment.
- B. **Subject to Financial Assistance.** The City's obligations under this Agreement are made subject to the terms of financial assistance agreements between the City and HUD, and in the event of a conflict between the terms of this Agreement and the financial assistance agreements between the City and HUD, the terms of the financial assistance agreements shall supersede and control.
- C. **Assignment.** 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 HOME Commitment in the Developer's possession as of the time of expiration of this Agreement, and the Developer must transfer to the City any accounts receivable attributable to the use of HOME Commitment in the Developer's possession as of the time of expiration of the Agreement, as required by 24 C.F.R. § 29.504(c)(2)(vii).
- G. **No Partnership.** Nothing contained in this Agreement, any mortgage, note or any other document or instrument related to this Project shall be deemed to create a joint venture, partnership relationship, or employer/employee relationship between

the City and 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: Lance C. Malina/Gregory T. Smith

If to Developer: Aurora St. Charles Senior Living L.P.,
c/o Evergreen Real Estate Services, LLC
566 W Lake St, Suite 400
Chicago, IL 60661
Attention: Jeffrey Rappin

With a copy to: Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Blvd., Suite 400
Chicago, IL 60661
Attention: Paul Davis

And: Aurora St. Charles Senior Living L.P.
566 W. Lake St., Suite 400
Chicago, IL 60661
Attention: Larry Pusateri

And: Seize the Future Development Foundation
43 W. Galena Blvd.
Aurora, IL 60506
Attn: David Hulseberg

And: NEF Assignment Corporation
10 South Riverside Plaza
Suite 1700
Chicago, IL 60606
Attention: _____

With a copy to: Holland & Knight LLP
131 South Dearborn Street, Floor 30
Chicago, IL 60603
Attention: Mike Rogers

And: BMO Harris Bank N.A.
115 S. LaSalle St., Floor 20W
Chicago, Illinois 60603
Attention: Allison Porter-Bell

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

And: Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, IL 60611
Attention: Legal Department

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

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

J. **Choice of Law / Venue.** This Agreement shall be governed by and construed in

accordance with the laws of the State of Illinois and any court proceedings between the Parties hereto shall be brought in 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.

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 St. Charles Senior Living L.P.
an Illinois limited partnership.

By: **Aurora St. Charles Senior Living GP L.L.C.**
an Illinois limited liability company,
its general partner

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 Thomas J. Weisner_____ and _____, Wendy McCambridge, personally known to me to be the 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 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 _____ day of _____, 2015.

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 Managing Member of Aurora St. Charles Senior Living, 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 Managing Member, he signed and delivered the said instrument as his 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.

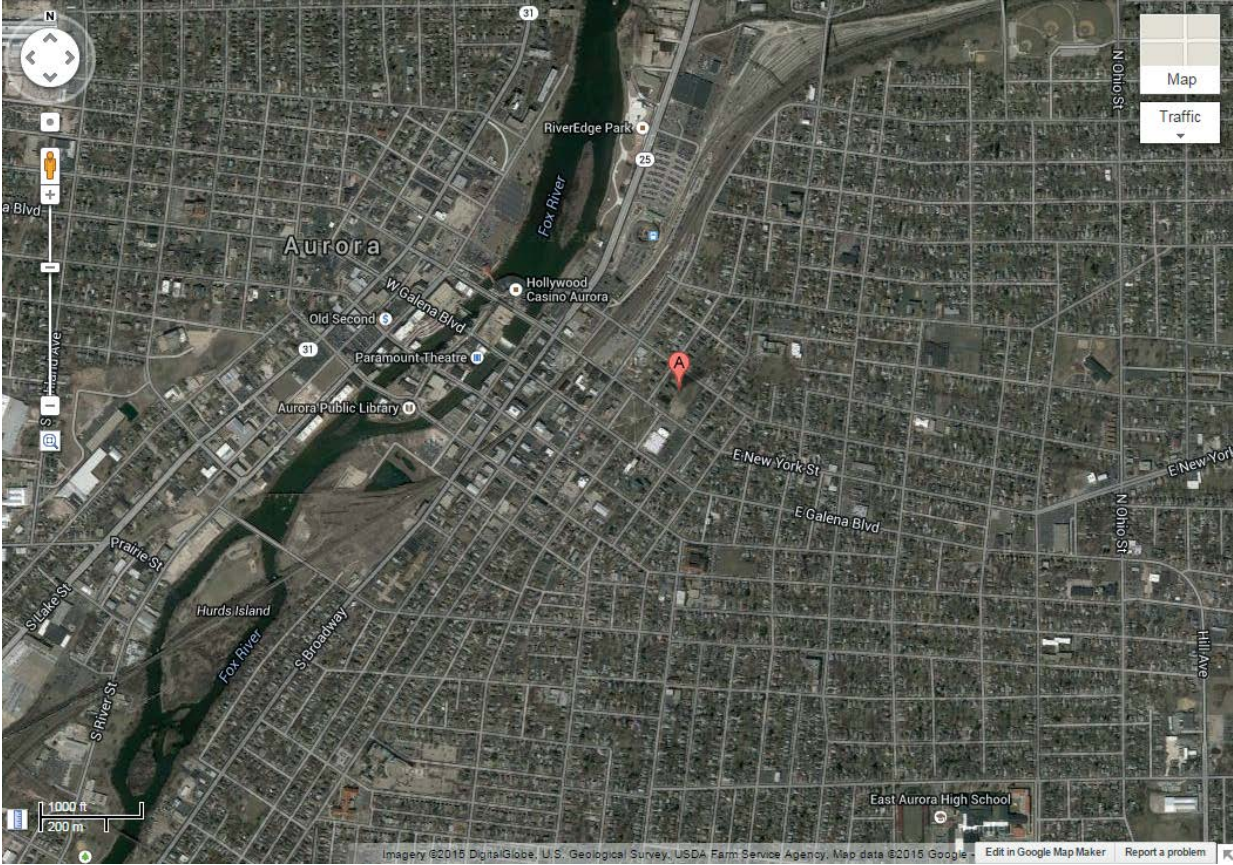
GIVEN under my hand and official seal, this _____ day of _____, 2015.

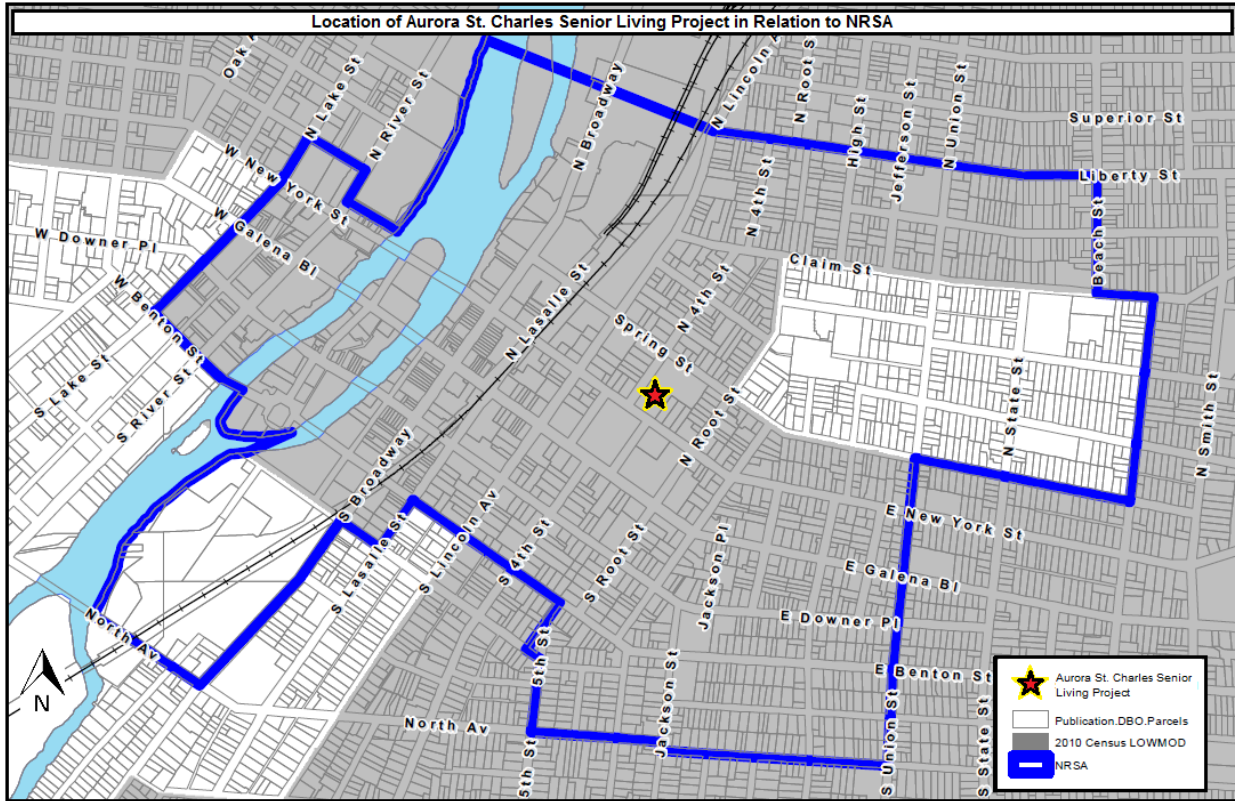
Notary Public

Exhibit A
Project Area
(Attached)

Aurora St. Charles Senior Living Project Location Map

The project is located at 400 E New York St, Aurora, IL 60505, approximately 1/3 mile from downtown Aurora





400 E. New York St., Aurora, IL 60505

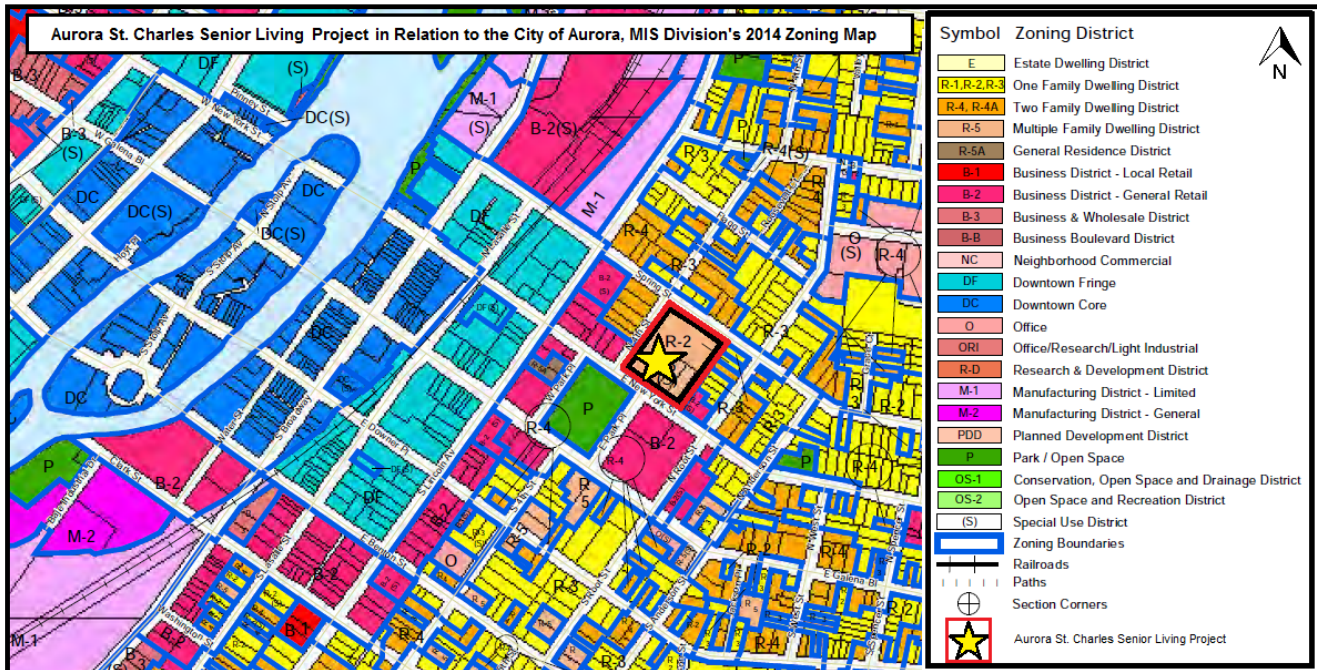


Exhibit B
Property Standards
(Attached)

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.
4. Energy Efficiency Guidelines

Space	Component or Function Affected	Recommendations	Description
All Living Spaces	Windows	Repair Option: Infiltration reduction and U-value improvement	(1) Inspect and replace any weather stripping that is in poor condition. (2) If there are no existing storm windows, install storm windows. (3) Seal gap around window frames with expanding foam sealant.
		Replacement Option 1: IECC 2009-compliant (same as ENERGY STAR)	Install windows with the following performance specifications: U-Factor <=0.35. No SHGC requirement.
	Floors	Replacement Option 1: Install linoleum, ceramic or other hard-surface flooring. <i>Compared to carpeting, this option is longer-lasting and lower-maintenance and improves indoor air quality.</i>	(1) Use low-VOC adhesives, mortar and grout. (2) Limit areas with vinyl.
		Replacement Option 2: Install new carpeting	Carpeting is not recommended due to its negative impact on indoor air quality. If carpeting is going to be installed: (1) Use carpeting that has been certified under the CRI IAQ Green Label Plus. (2) Flush area where carpet has been installed with fresh air for 72 hours. (3) Schedule carpet installation as late in the

		renovation process as possible to reduce accumulation of construction-generated pollutants. (4) Install short pile carpet.
	Carpet Restoration Option: Carpet Cleaning	Traditional carpet cleaning chemicals can degrade internal air quality and irritate more sensitive building occupants. Specify environmentally preferable carpet cleaning solutions.
	Replacement Option 3: Install new wood floors or engineered wood floors	(1) Use FSC-certified flooring material. (2) Use low-VOC finishes when finishing floors onsite or install floors manufactured with low-VOC adhesives and finishes and that do not contain urea formaldehyde.
	Repair Option--Wood Floors: Refinish existing wood floors	Use low-VOC floor finishes
Walls and Ceiling	Paint walls and ceiling	1) Use low- or no-VOC primers and latex paint on interior surfaces. Latex paint provides an adequate moisture retarder.
Insulation	Option 1: Install insulation where walls are accessible	Attic floor R-value: R-38, accessible walls to maximum potential (2x4 wall = R-15 high-density max typical)
	Option 2: IECC 2009-compliant (may require furring of walls)	<u>Attic floor R-value:</u> R-38. <u>Wood frame wall R-value:</u> R-20 in cavity or R-13 in cavity plus R-5 insulated sheathing. <u>Mass wall R-value:</u> R-13 if less than half of the insulation is on interior of mass wall, R-17 otherwise. <u>Floor R-value:</u> R-30 or insulation sufficient to fill joist cavity, R-19

		<p>minimum. <u>Basement wall R-value:</u> R-10 continuous insulated sheathing on interior or exterior or R-13 cavity insulation on the interior of the basement wall. <u>Slab R-value:</u> R-10 to a depth of 2 ft. <u>Crawl space R-value:</u> Same as basement wall.</p>
<p>Air Leakage</p>	<p>Option 1: Use EPA weatherization standards</p>	<p>In attic, close off all bypasses -- openings where air can leak from the house into the attic: soffits, knee walls, can lights, area around flues, gaps around plumbing vent pipes. Seal around exterior windows and storm windows. Use low-VOC adhesives and sealants. Provide foam seals at electrical boxes located along exterior walls.</p>
	<p>Option 2: Build to IECC 2009 402.4.1</p>	<p>Caulk, gasket, weatherstrip or otherwise seal: 1) All joints, seams and penetrations; 2) Site-built windows, doors and skylights; 3) Openings between window and door assemblies and their respective jambs and framing; 4) Utility penetrations; 5) Dropped ceilings or chases adjacent to the thermal envelope; 6) Knee walls; 7) Walls and ceilings separating a garage from conditioned space; 8) Behind tubs and showers on exterior walls; 9) Common walls between dwellings; 10) Attic access openings; 11) Rim joist junction; 12) Other sources of infiltration</p>

	Infiltration and Insulation Performance Testing	Option 1: Meet IECC 2009 Blower Door Testing Requirements	Perform blower door test. Verify building tightness by testing using blower door test. Building will pass if fewer than 7 ACH at 33.5 psi.
		Option 2: Visual Inspection (IECC 2009)	Conduct field verification to confirm building conforms to criteria established in Table 402.4.2 in IECC 2009
	Adhesives and Sealants	Use low VOC adhesives and sealants.	
	Lighting	Install High Efficacy Lighting	Install compact fluorescent lamps in place of traditional incandescent lamps.
		Install LED Exit Signs	Install LED exit signs instead of incandescent or fluorescent signs
Kitchen	Refrigerator	Maintenance Option	1) Inspect door gaskets. Replace with new gaskets if gaskets are in poor condition or door does not close securely. 2) Vacuum refrigerator condenser coils and verify that they are clean and free of any other material that will impede the transfer of heat to the surrounding air.
		Replacement Option: ENERGY STAR Refrigerator	1) Replace existing refrigerator with an ENERGY STAR rated refrigerator 2) Properly dispose of old refrigerator using local recycling service
	Kitchen Sink	Existing or New Sink: Low-flow Aerator	Install 1.5 GPM aerator
	Dishwasher	Replacement Option: ENERGY STAR Dishwasher	1) Replace existing dishwasher with an ENERGY STAR rated dishwasher 2) Properly dispose of old dishwasher using local recycling service
Bathroom	Ventilation	Gas Oven and Stove Combustion Product Exhaust	If possible, only install gas ovens and stoves with

			exhaust hoods that vent directly to the exterior.
	Cabinetry	Replacement Option	1) Use FSC-certified cabinetry that contains no urea formaldehyde and that is finished with low or no VOC finishes
	Toilet	Replace Existing Toilet	Install low-flow or dual flush toilet
	Lavatory	Existing or New Sink: Low-flow Aerator	Install 1.0 GPM aerator
	Shower	Low-flow Shower Head	Install 1.5 GPM shower head
	Ventilation	Option 1: Provide bath fan	Provide 50 cfm fans with timer to run after occupancy for 5 minutes in all bathrooms.
		Option 2: Provide Low-Sone bath fan with continuous operation	Provide 50 cfm fans with timer to run after occupancy for 5 minutes in all but one bathroom. In the remaining bathroom, a continuously operating bath fan (super quiet low-sone model), provide controlled ventilation for entire house. 50 cfm will work for 2000 sf house.
Attic Space	Ventilation	Inspect soffit and ridge vents for blockage	Verify that soffit and ridge vents are not occluded to ensure that natural attic ventilation is working as intended.
		Provide openings with insect screen and eave ventilation baffles.	Provide 1 SF of ventilation for every 300 sf of attic floor. Install ventilation baffles if eaves are vented.
Laundry Area	Washer/Dryer	Maintenance Option	Clean lint filter in dryer and lint exhaust piping, replace water supply hoses to washer. Clean washer filter if present.
		Replacement Option	Replace with ENERGY STAR washer/dryer. Perform maintenance above.

Crawls pace (if applica ble)	Moisture Control	Insulate and Seal	1) Install continuous vapor diffusion retarder (all joints taped) on crawl space floor to interior foundation wall. 2) Insulate space between subfloor and sill plate with batt insulation. 3) Insulate between floor joists to R-19 minimum. 4) Install fire-rated, impermeable, rigid insulation on bottom face of floor joists (tape and seal all joints). Apply sealant or gasket to interface between rigid insulation and sill plate.
Buildin g Exterior	Siding	Drainage Plane	Where siding must be replaced, provide drainage plane gap behind siding and air barrier.
	Roofing	Install ENERGY STAR High Albedo Roofing	Install high albedo roof to reduce summer cooling load
	Downspout s	Disconnect Downspouts from Sewer with Rain Barrel Option	Disconnect downspouts from sewer to reduce demand on water treatment facilities. Use rain barrels to reduce potable water used for irrigation.
	Exterior Doors	Repair Option Replacement Option (IECC 2009 and ENERGY STAR)	Install new weather stripping if existing weather stripping is damaged or ineffective. U<=0.35
Heating , Plumbi ng and Insulati on	Hot Water Boiler	Maintenance Option	1) Inspect and verify proper operation of expansion tank and pressure relief valve. 2) Ensure boiler pressure is operating in normal operating range (typically 12-15 psi). 3) Inspect circulating pumps for proper operation. Lubricate if necessary. 4) Clean heat transfer coils. 5) Check for proper sequence of operations to ensure that control system and safety

		devices are functioning properly. 6) Bleed air from radiators.
	Replacement Option 1: Federally Mandated Minimum Efficiency Boiler	>=78% AFUE
	Replacement Option 2: ENERGY STAR Rated Boiler	>=85% AFUE
Furnace	Repair Option: Existing Furnace Maintenance and Efficiency Improvement	1) Clean burners and vacuum combustion area to remove debris. 2) Install new air filters that are rated at least MERV 13. 3) Check blower motor fan belt for wear and proper tension. Replace with cogged belt. 4) Inspect furnace and flue for rust, stains, debris as this could be an indication of a problem with combustion exhaust components. 5) Verify correct sequence of operations.
	Replacement Option 1: Federal Standard required efficiency	Install furnace with Federally mandated minimum energy efficiency (AFUE>=78%)
	Replacement Option 2: Energy Star Furnace	Install Energy Star furnace (AFUE>=90%)
Domestic Hot Water	Repair Option: Existing Furnace Maintenance and Efficiency Improvement	1) Clean burner assembly. 2) Drain sediment from tank. 3) Insulate tank with water heater blanket 4) Insulate hot water pipe with R-2 insulation 5) Provide heat trap in supply side of the hot water heater if not already installed. 6) Confirm vent meets code and has adequate draft hood. Inspect draft hood for any signs of improper function. 7) Verify that water heater

		follows correct sequence of operation.
	Replacement Option 1: ENERGY STAR Gas Storage Water Heater	Install ENERGY STAR gas storage water heater (EF>=0.62)
	Replacement Option 2: ENERGY STAR Condensing Gas Storage Water Heater	Install ENERGY STAR condensing gas storage water heater (EF>=0.8)
	Replacement Option 3: ENERGY STAR Whole House Tankless Water Heater	Install ENERGY STAR tankless gas water heater (EF>=0.82)
Central Air Conditioning System	Repair Option: Existing Evaporator and Condenser Unit	1) Inspect condenser and evaporator coils. Clean if necessary. 2) Use fin comb to straighten any damaged condenser fins. 3) Inspect and repair any damaged insulation on suction line of line set. 4) Check refrigerant line charge and add additional refrigerant if necessary. 5) Ensure that condenser unit is level.
	Replacement Option 1: ENERGY STAR Air Conditioning Unit	Install ENERGY STAR A/C system. Must have SEER rating of 14.5 or greater.
Air Distribution Ductwork	Duct Sealing and Insulation: IECC 2009	Insulate all ducts that pass through attic or other unconditioned spaces with R-8 insulation. - Seal ductwork as specified in Section M1601.4.1 of the International Residential Code. - Perform duct tightness testing according to IECC 2009 Section 403.2.2

	Post-construction Duct Cleaning	If there is existing ductwork, the system should be cleaned before system start-up. If new ductwork is installed during renovation, proper measures must be taken to seal ducts from construction generated debris.
Window Unit Air Conditioning System	Replacement Option 1: ENERGY STAR Window Units	Install ENERGY STAR window unit air conditioners. SEER ratings vary based on capacity.
	Replacement Option 2: ENERGY STAR Split Ductless A/C Unit	Install ENERGY STAR ductless system. Must have SEER rating of 14.5 or greater.
Thermostat	Install and Program Programmable Thermostat	Programmable thermostat should be installed and programmed according to IECC 2009.
Combustion Air	DHW Heaters, Boilers and Furnaces	Use only sealed combustion, direct vent, power vent or induced draft appliances if they are to be installed in conditioned spaces. Avoid hot water heaters that use draft hoods.
	Gas and Wood-burning Fireplace Supply Air	Supply air should be ducted directly to the firebox

5.

6.

7.

Exhibit C

Note

NOTE

\$500,000.00
(Amount)

Aurora, IL

_____, 2015
(Closing Date)

Property Address: 400 E. New York Street, Aurora, IL 60505,
PIN: 15-22-451-001, -002, -003, and -004 ("Premises")

THIS NOTE is made effective as of the date stated above by AURORA ST. CHARLES SENIOR LIVING L.P., an Illinois limited partnership ("BORROWER"), whose address is 566 West Lake, Suite 400, Chicago, IL 60661, 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 St. Charles Senior Living, LLC, approved by City Council resolution R_____, with an effective date of _____, 2015 ("Development Agreement"), BORROWER promises to pay LENDER the principal sum of FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,00.00) of U.S. dollars ("PRINCIPAL") with interest in the amount of 1 percent (1%) on the terms set forth in the Development Agreement, except as set forth in Paragraph 5.D. below.

The BORROWER acknowledges and agrees that the LENDER may transfer this Note. 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 immediately pay the full amount of principal if prior to _____, the Twelve (12) HOME units cease to be maintained and operated as affordable housing for households whose incomes at initial occupancy are 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. 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: Aurora St. Charles Senior Living, LLC 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 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 under the terms of this Note or the Mortgage securing this Note.

A. Notice of Default

If BORROWER is in default, 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.

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 at a later time.

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%) or the maximum annual interest rate permitted by law, whichever is greater, 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 at its corporate address above. 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 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 partners, officers, 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 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) electronic communication, whether by facsimile or electronic mail, together with confirmation of transmission; (c) overnight courier; or (d) registered or certified United States mail, postage prepaid, return receipt requested.

If to Borrower:

Aurora St. Charles Senior Living L.P.,
c/o Evergreen Real Estate Services, LLC
566 W. Lake St., Suite 400
Chicago, IL 60661
Attention: Jeffrey Rappin

With a copy to: Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Blvd., Suite 400
Chicago, IL 60661
Attention: Paul Davis

And: Aurora St. Charles Senior Living L.P.
566 W. Lake St., Suite 400
Chicago, IL 60661
Attention: Larry Pusateri

And: Seize the Future Development Foundation
43 W. Galena Blvd.
Aurora, IL 60506
Attn: David Hulseberg

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

And: NEF Assignment Corporation
10 South Riverside Plaza
Suite 1700
Chicago, IL 60606
Attention: _____

With a copy to: Holland & Knight LLP
131 South Dearborn Street, Floor 30
Chicago, IL 60603
Attention: Mike Rogers

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

Attention: Allison Porter-Bell

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

And: Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, IL 60611
Attention: Legal Department

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

Aurora St. Charles Senior Living L.P.
an Illinois limited partnership.

By: **Aurora St. Charles Senior Living GP L.L.C.**
an Illinois limited liability company,
its general partner

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: 400 E. New York Street, Aurora, IL 60505,
PIN: 15-22-451-001, -002, -003, and -004 ("Premises")*

MORTGAGE (ILLINOIS)

THIS INDENTURE ("Mortgage"), made effective as of the ____ day of _____, 2015, between **Aurora St. Charles Senior Living L.P.**, an Illinois limited partnership, having a principal place of business at 566 W. Lake St., Suite 400, Chicago, IL 60661, 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 FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00), 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 Twelve (12) HOME units cease to be maintained and operated as affordable housing for households whose incomes at initial occupancy are 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, 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, situate, lying and being in the CITY OF AURORA, COUNTY OF KANE, AND STATE OF ILLINOIS, to wit:

LEGAL DESCRIPTION:

DRAFT - 10/5/15

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in block 20 of McCarty's Amended Plat of Aurora, on the east side of Fox River, 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): 15-22-451-001, -002, -003, and -004

Address of Real Estate: 400 East New York, 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 ST. CHARLES SENIOR LIVING L.P.

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 St. Charles Senior Living L.P.
an Illinois limited partnership.

By: **Aurora St. Charles Senior Living GP L.L.C.**
an Illinois limited liability company,
its general partner

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 Managing Manager of Aurora St. Charles Senior Living L.P., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Manager, he signed and delivered the said instrument as his 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 _____, 2014.

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 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 St. Charles Senior Living L.P., with an effective date of _____, 2015 (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. To prevent default hereunder MORTGAGOR shall pay in full under protest, in the manner provided by statute, any tax or assessment, which MORTGAGOR may desire to contest.

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.

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 therein, 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 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 of the first mortgage loan. 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, 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 attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be 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, claimant or defendant, 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. 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, the MORTGAGOR shall provide written notice, in advance, to the MORTGAGEE.

20. If, prior to _____, the Twelve (12) HOME units is no longer used as affordable housing for senior citizen (55 years of age or older) households whose incomes at initial occupancy are 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. The MORTGAGOR shall notify MORTGAGEE of any such change in use immediately. However, this option shall not be exercised by MORTGAGEE if exercise of such change is prohibited by Federal law as of the date of this mortgage.

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 partnership interests in the Mortgagor, the withdrawal, removal, replacement, and/or addition of the general partner of the MORTGAGOR, nor the withdrawal, replacement, and/or addition of any of its limited partners or its limited partners' 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 limited partners 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 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 entitle MORTGAGEE, following expiration of the applicable cure period identified below, to the remedies specified in Paragraph 22. MORTGAGOR shall give MORTGAGEE written notice of a Material Default. MORTGAGEE shall have a period of thirty (30) days after

such notice is given within which to cure the Material Default prior to exercise of MORTGAGOR of its remedies under this mortgage.

22. In addition to any other remedy herein specified, if any Material Default under this Mortgage shall occur, which is not cured within the applicable cure period, 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 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 or the maximum interest rate permitted by law, whichever is greater.
- f. Enforce this mortgage in any other manner permitted under the laws of the State of Illinois.

23. The MORTGAGOR shall give the MORTGAGEE immediate 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 MORTGAGEE. 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 immediate 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. 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 (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. 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, 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 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, 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, 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) electronic communication, whether by facsimile or electronic mail, together with confirmation of transmission; (c) overnight courier; or (d) registered or certified United States mail, postage prepaid, return receipt requested.

If to MORTGAGOR:

If to Borrower:

Aurora St. Charles Senior Living L.P.,
c/o Evergreen Real Estate Services, LLC
566 W. Lake St., Suite 400
Chicago, IL 60661
Attention: Polly Kuehl

With a copy to: Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Blvd., Suite 400

Chicago, IL 60661
Attention: Paul Davis

And:

Aurora St. Charles Senior Living L.P.
566 W. Lake St., Suite 400
Chicago, IL 60661
Attention: Larry Pusateri

And:

Seize the Future Development Foundation
43 W. Galena Blvd.
Aurora, IL 60506
Attn: David Hulseberg

And:

NEF Assignment Corporation
10 South Riverside Plaza
Suite 1700
Chicago, IL 60606
Attention: _____

With a copy to:

Holland & Knight LLP
131 South Dearborn Street, Floor 30
Chicago, IL 60603
Attention: Mike Rogers

And:

BMO Harris Bank N.A.
115 S. LaSalle St., Floor 20W
Chicago, Illinois 60603
Attention: Allison Porter-Bell

With a copy to:

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

And:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, IL 60611
Attention: Legal Department

If to MORTGAGEE:

City of Aurora, Neighborhood Redevelopment Division
51 E. Galena Blvd
Aurora, Illinois 60505

Attn: Manager

Exhibit A to Mortgage

Legal Description and Property Address

Legal Description

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in block 20 of McCarty's Amended Plat of Aurora, on the east side of Fox River, in the City of Aurora, Kane County, Illinois.

Permanent Index Number

15-22-451-001, -002, -003, and -004

Property Address

400 East New York St., 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 _____, 2014, by and between AURORA ST. CHARLES SENIOR LIVING L.P., an Illinois limited partnership, having a principal place of business at _____ (“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.

R E C I T A L S

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. The CITY has been awarded a grant of HOME Investment Partnership Act funds (“HOME Funds”) from the United States Department of Housing and Urban Development (“HUD”).

C. The City has agreed to make a loan to Borrower of HOME 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 St. Charles Senior Living L.P., LLC, approved by the City of Aurora City Council in Resolution number R_____, and executed by the Borrower and the City on _____ (“Development Agreement”), together with any subsequent amendments thereto, (b) the Note and (c) a Mortgage in the amount of FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00) 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 (together referred to as the "Project") shall be in conformance with HOME, HCDA, the regulations promulgated pursuant to HOME and HCDA ("Regulations"), the Development Agreement and any additional rules, regulations, policies and procedures of City promulgated under HOME or HCDA, 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 Exhibit K Legal Description, is improved with 60 multi-family units, twelve (12) of which are funded through HOME. The HOME-assisted units include six one bedroom and six two-bedroom units that shall be used to provide permanent, affordable rental housing for households whose incomes at initial occupancy do not exceed Fifty Percent (50%) of the median family income of the Chicago-Naperville-Joliet MSA as published by the United States Department for Housing and Urban Development ("HUD"), from time to time, adjusted for family size. Preference in selection of residents shall be given, to the extent permitted by law, to senior veteran referrals and to qualifying ~~former~~ senior residents on the Aurora Housing Authority waitlist, including, but not limited to, former residents of the Jericho Circle development. The Twelve (12) HOME units shall be rented such that tenant contribution not exceed the Maximum Allowable Low HOME Rent under the HOME Investment Partnership Program defined under 24 C.F.R. Part 92 (the "HOME Regulations") as published by HUD from time to time. The maximum Low HOME Rent for a one bedroom dwelling unit in effect on the date of this Regulatory Agreement is _____, including utilities. The

maximum Low HOME Rent for a two bedroom dwelling unit in effect on the date of this Regulatory Agreement is _____, including utilities.

- i. The specific HOME-assisted units must be identified no later than the time of initial occupancy.
 - ii. The twelve HOME-assisted units may be floating units within the Project site; however, there must always be twelve HOME designated units throughout the Affordability Period.
 - iii. The Developer must ensure that the twelve HOME-assisted 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 as provided in Section 92.252(e) of the HOME Regulations, 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"). In the event of foreclosure or deed in lieu of foreclosure relating to any other loan encumbering the project, the City shall have the right, but not the obligation, to acquire the project prior to such foreclosure or deed in lieu of foreclosure to preserve the foregoing affordability provisions as provided in Section 92.252 of the HOME Regulations.

4. Acts Requiring City Approval. Except as permitted pursuant to the other Loan Documents, 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 seven (7) days (with respect to monetary defaults) or within thirty (30) days (with respect to non-monetary defaults) 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, 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 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 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 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. Because the injury to the City arising from a default

under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, Borrower acknowledges and agrees that in the event of a violation of this Regulatory Agreement, the City's remedies at law would be inadequate to assure the City's public purpose under the HOME program.

- 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 Project 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 of the Note (the "Cancellation Date") is prior to the expiration date of the Affordability Period, the Obligations shall remain in effect until the last day of the Affordability Period, 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. In the event of a foreclosure or deed in lieu of foreclosure relating to any other loan encumbering the Project, the City or its designee shall have the right, but not the obligation, to acquire the Project prior to such foreclosure or deed in lieu of foreclosure to preserve the foregoing affordability provisions as provided in Section 92.252 of the HOME Regulations.

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.
- 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) electronic communication, whether by facsimile or electronic mail, together with confirmation of transmission; (c) overnight courier; or (d) registered or certified United States mail, postage prepaid, return receipt requested.

If to Borrower:

Aurora St. Charles Senior Living L.P.,
c/o Evergreen Real Estate Services, LLC
566 W. Lake St., Suite 400
Chicago, IL 60661
Attention: Polly Kuehl

With a copy to:

Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Blvd., Suite 400
Chicago, IL 60661

Attention: Paul Davis

And:

Aurora St. Charles Senior Living L.P.
566 W. Lake St., Suite 400
Chicago, IL 60661
Attention: Larry Pusateri

And:

Seize the Future Development Foundation
43 W. Galena Blvd.
Aurora, IL 60506
Attn: David Hulseberg

And:

NEF Assignment Corporation
10 South Riverside Plaza
Suite 1700
Chicago, IL 60606
Attention: _____

With a copy to:

Holland & Knight LLP
131 South Dearborn Street, Floor 30
Chicago, IL 60603
Attention: Mike Rogers

And:

BMO Harris Bank N.A.
115 S. LaSalle St., Floor 20W
Chicago, Illinois 60603
Attention: Allison Porter-Bell

With a copy to:

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

And:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, IL 60611
Attention: Legal Department

If to City:

City of Aurora
Neighborhood Redevelopment Division
51 E. Galena Blvd
Aurora, Illinois 60505

Attn: Manager

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 general or limited partner 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 Project 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 general partner 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 general partner of Borrower, (b) any waste involving the Project, or (c) Borrower's or any general partner'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: _____

Attest: _____
City Clerk

Date: _____, 2015

BORROWER

Aurora St. Charles Senior Living L.P.
an Illinois limited partnership.

By: **Aurora St. Charles Senior Living GP L.L.C.**
an Illinois limited liability company,
its general partner

By: _____

Name: _____

Title: _____

Date: _____, 2015

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 Managing Member of Aurora St. Charles Senior Living L.P., 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 Managing Member, he signed and delivered the said instrument as his 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 _____, 2015.

Notary Public

Exhibit A

Legal Description and Property Address

Legal Description

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in block 20 of McCarty's Amended Plat of Aurora, on the east side of Fox River, in the City of Aurora, Kane County, Illinois.

Permanent Index Number

15-22-451-001, -002, -003, and -004

Property Address

400 East New York St., 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
Environmental Review Process
(Attached)

1. Historic Properties Review.
2. Tribal Consultation Review.
3. Floodplain Management Review.
4. Wetlands Protection Review.
5. Coastal Zone Management Review.
6. Sole Source Aquifers Review.
7. Endangered Species Review.
8. Wild and Scenic Rivers Review.
9. Air Quality Review.
10. Farmland Protection Review.
11. Noise Abatement and Control Review.
12. Explosive or Flammable Operations Review.
13. Toxic Chemicals and Radioactive Materials Review.
14. Airport Clear Zones and Accident Potential Zones Review.
15. Environmental Justice Review.

Exhibit H

Priority Interests

(Attached)

Priority Interests

1. Financing Party: Illinois Housing Development Authority (“IHDA”)
 Anticipated Amount: \$12,043,303
 Documentation: IHDA Low-Income Housing Tax Credit Extended Use Agreement, to be executed in 2015

2. Financing Party: Illinois Department of Commerce and Economic Opportunity
 Anticipated Amount: \$6,707,907
 Documentation: Rivers Edge Redevelopment Zone/State Historic Tax Credit Extended Use Agreement, to be executed in 2015 [\[Comment: Do not anticipate there will be one.\]](#)

3. Financing Party: BMO Harris Bank, N.A.
 Anticipated Amount: \$16,642,010
 Documentation: Bridge and Construction Loans, Senior Construction Mortgage & Other Security Instruments to be executed in 2015

4. Financing Party: IHDA
 Anticipated Amount: \$2,910,000.00
 Documentation: Mortgage, Regulatory Agreement & Other Security Instruments, to be executed in 2015

5. Financing Party: City of Aurora
 Anticipated Amount: \$500,000
 Documentation: Notes, Mortgage, Regulatory Agreement & Other Security Instruments to be executed in 2015

Exhibit I

Drug Free Workplace Certification

(Attached)

Aurora St. Charles Senior Living L.P., LLC 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

Amended and Restated Partnership Agreement of the Developer

(To Be Attached – see Section II.A.4.d.)

Exhibit K

Property Description

Aurora St. Charles Senior Living: Site Legal Description

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in block 20 of McCarty's Amended Plat of Aurora, on the east side of Fox River, in the City of Aurora, Kane County, Illinois.
Commonly known as: 400 East New York, Aurora, Illinois

PIN numbers: 15-22-451-001, -002, -003, and -004

Exhibit L

City's Affirmative Marketing Policy

(Attached)

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

STATEMENT OF POLICY:

The City of Aurora (“City”), in accordance with the regulations of the HOME Investment Partnership (HOME) Program (24 CFR 92.3510), has established this “Affirmative Fair Housing Marketing Plan” to ensure that the programs and projects with allocated HOME Funds 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:

The HOME Final Rule regarding affirmative marketing procedures and requirements apply to rental and homebuyer projects containing five or more HOME-assisted units. 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 HOME support.

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

Exhibit M

Developer Rehabilitation Plan

Exhibit N

**AURORA ST. CHARLES SENIOR LIVING
TENANT SELECTION PLAN**

Document comparison by Workshare Compare on Monday, October 5, 2015
5:12:15 PM

Input:	
Document 1 ID	PowerDocs://CHICAGO/165496/1
Description	CHICAGO-#165496-v1-Aurora_St_Charles_Living_Center_Development_Agreem ent_
Document 2 ID	PowerDocs://CHICAGO/165496/5
Description	CHICAGO-#165496-v5-Aurora_St_Charles_Living_Center_Development_Agreem ent_
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Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Deletions	117
Moved from	1
Moved to	1
Style change	0
Format changed	0

Total changes	334
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