

Return Address:
City of Auburn
City Clerk
25 West Main
Auburn, WA 98001

Above this line reserved for recording information.

INGRESS, EGRESS SURFACE & AIR RIGHTS EASEMENT

Grantor/Borrower: CITY OF AUBURN

Grantee/Assignee/Beneficiary: AUBURN CITY CENTER SENIOR LIVING
ASSOCIATES, LLC

Legal Description/STR: Portions of Lot 1 and Lot 2, Block 2, Town of Slaughter,
Volume 2, Page 56 NE 1/4 of SE 1/4 S13 T21N R4E [Full
Legal Description on Exhibit A attached hereto.]

Assessor's Tax Parcel ID#: 7815700085

GRANTOR, CITY OF AUBURN, WASHINGTON, for and in consideration of the payment of Sixty Five Thousand Dollars and No Cents (\$65,000.00) and other valuable consideration, grants to AUBURN CITY CENTER SENIOR LIVING ASSOCIATES, LLC, the following easements, subject to the terms and conditions set forth herein (collectively, the "Easement" or the "Agreement"):

A perpetual exclusive vertical easement for the use of all its air rights in the volume of air space defined as the Air Easement Area. The sole permitted use of the foregoing easement is for the construction, maintenance, occupancy, and use of the improvements as permitted by the City of Auburn under building permit BLD18-0140, which is on file with the City of Auburn and is incorporated by this reference.

EASEMENT AREA: The Air Space Easement Area consists of the volume of air directly above the ground or finished pavement surface of the Surface Easement Area that is reasonably necessary to accommodate the permitted uses of the easement.

A perpetual non-exclusive access easement over, through, and across the Surface Easement Area giving Grantee, including its tenants, subtenants, agents, contractors, and employees, the absolute right, at times as may be necessary, for immediate pedestrian and non-motorized ingress

and egress upon said Easement Area; provided, however, that Grantee's easement rights shall not be deemed or act to exclude the public from ingress and egress upon said Easement Area.

EASEMENT AREA: The Surface Easement Area consists of that portion of LOT 1 AND THE EAST 4 FEET OF LOT 2, BLOCK 2, TOWN OF SLAUGHTER, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 56, IN KING COUNTY, WASHINGTON legally described in **Exhibit A** and depicted in **Exhibit B** attached hereto.

The foregoing easements are granted subject to and conditioned upon the following terms, conditions, and covenants which the parties promise to faithfully and fully observe and perform:

1. **MAINTENANCE OF THE SURFACE EASEMENT AREA SURFACE.** The Grantee, at its sole cost and obligation, shall keep the surface areas located within the Surface Easement Area in a neat and clean manner, free from debris, obstructions and graffiti. Under the direction of the Grantor, but at the sole cost of Grantee, Grantee shall repair any damage to the Surface Easement Area caused by them, their contractors, agents or tenants. Grantee shall remove any obstructions, graffiti or debris located within the Surface Easement Area within 24 hours, when practical, and within a reasonable time period otherwise. Grantee shall immediately remove or cause to have removed any obstructions which may present a safety hazard to either Parties' property or to any person. Grantee further agrees to not place, or to cause to be placed any permanent structures within the Surface Easement Area, and not to undertake, authorize or permit to any construction or excavation on or near the Surface Easement Area which might in any fashion damage the Area's surface. If the Grantee fails to remedy any condition that the City Engineer deems a safety hazard within the time specified in a written notice from the Engineer, the Grantor may correct the condition as is identified in the written notice and Grantee shall pay the out-of-pocket expenses of the work and if it fails to do so within ninety (90) days of notice, which shall include reasonable supporting documentation, the unpaid amount for such expenses shall be secured by a continuing lien on the dominant estate for the benefit of Grantor.

Grantor retains the right to use the Surface Easement Area as long as such use does not interfere with the rights granted by the foregoing easements. Notwithstanding damage caused by Grantee or any of Grantee's tenants as described above, the Grantor in its sole cost and obligation is responsible for the maintenance, repair, replacement and care (together "Work") to the surface and subsurface of the Grantor's property located within the Surface Easement Area. The Grantor has full discretion and authority as to the type of surface, repair and replacement of the surface and subsurface used or placed upon Grantor's property. Grantor shall make all reasonable accommodations to protect and maintain access to the Grantee's property while fulfilling its work obligations. For purposes of this paragraph, reasonable access includes ingress and egress to only a portion of the Surface Easement Area during a period of no more than 90-days in a 365-day period when it is reasonably necessary for Grantor to perform maintenance, repair, or construction work on the servient estate, as long as Grantor does not prevent ingress and egress to any entryway during this period that is the sole access to Grantee's building or to the leasehold of a building tenant. Grantee agrees that it will not install awnings, balconies or other improvements that obstruct or impede Grantor's maintenance, operations, repair, or replacement of Grantor's property and facilities, including, but not limited to, lighting and stormwater management systems.

Grantee acknowledges the presence of a subsurface stormwater management system that limits the loading capacity of the property's surfaces. Grantee agrees to not exceed the load limits designated by the Grantor and agrees to replace in-kind any portion of the stormwater management system or other Grantor facilities damaged by the Grantee in accordance with the City's standards and requirements.

2. MAINTENANCE OF THE BUILDING IMPROVEMENTS WITHIN THE AIR SPACE EASEMENT AREA. Grantee, as owner of those improvements located within the Air Space Easement Area, shall at their sole cost and expense maintain all awnings, balconies, and other improvements that are within the Area in a clean, safe, and structurally sound condition and with awnings being free of rips and tears. Grantee shall immediately after notice repair or correct or cause to be repaired or corrected any such structure or item on such structure that presents a hazard to persons using the Grantor's property. The maintenance, cleaning, and repair of all such improvements will be accomplished in a manner that will not interfere with the use of the dominant estate, including the Surface Easement Area. If the Grantee fails to remedy any condition that the City Engineer deems a safety hazard within the time specified in written notice from the Engineer, the Grantor may correct the condition as identified in the written notice, assess the amount on Grantee, and Grantee shall pay the cost of the remedial work plus an additional 10% for administrative and management purposes. If Grantee fails to pay the amount within ninety (90) days of notice, which shall include reasonable supporting documentation, the unpaid amount for such expenses shall be secured by a continuing lien on the dominant estate for the benefit of Grantor.

The Grantee shall prevent any discharges from cleaning or maintenance activities from entering the stormwater catch basins and thence into the stormwater detention facility located in the Grantor's property legally described in Exhibit A.

3. INDEMNIFICATION Grantee, its successors and assigns, covenants and agrees to defend, indemnify and hold harmless Grantor and Grantor's officers, employees, representatives, agents, successors and assigns (hereinafter collectively the "Indemnitees") from all claims, losses, expenses, liens (including, without limitation, liens or claims for services rendered or labor or materials furnished), encumbrances, liabilities, penalties, judgments, settlements, fines, damages, environmental response and cleanup costs, proceedings, actions (civil, criminal or administrative), and costs, including without limitation, attorney's fees, court costs, consultant fees, expert fees and other litigation-related expenses, brought against, imposed upon, suffered by or paid by Indemnitees and arising out of or in connection with or resulting from, indirectly or directly: (i) construction, maintenance, installation or repair activities within the Air Space and Surface Easement Areas by Grantee, its agents, employees, representatives, and successors and assigns; or (ii) the failure of Grantee its agents, employees, representatives, and successors and assigns to properly to maintain any structures within the Air Space and Surface Easement Areas in good condition and repair, or (iii). use or occupancy of the Air Space and Surface Easement Area by Grantee, its agents, employees, tenants, contractors, invitees, and successors and assigns.

4. INSURANCE. Grantee and its successors and assigns, shall obtain and maintain during the entire term of this Agreement a policy or policies of general public liability insurance, including broad form endorsements, on an occurrence basis, naming City of Auburn as an additional insured using ISO form CG 20 12, with combined policy limits of not less than \$2,000,000 for injuries, including accidental death, to any one person, and subject to the same limit for each person, not less than \$2,000,000 for any one accident involving two or more persons; and property damage liability insurance shall not be less than \$2,000,000, for any one accident and not less than \$2,000,000 aggregate with respect to the improvements to be located within the Surface and Air Space Easement Areas.

5. EASEMENT TERMINATION: The rights granted within this Easement are specific to the development and construction of the improvements as permitted by the City of Auburn under building permit BLD18-0140. Upon the building being demolished causing elements of the building to no longer occupy the air rights granted in this easement, this Easement and all rights and privileges granted within this easement shall automatically terminate. However,

failure of the building elements to occupy the air rights granted in this Easement as a result of repair, replacement, fire, or acts of God shall not be cause for termination.

At such time as the owner(s) of the building elect to demolish the building they shall record a release of easement. Failure to record any such release of easement does not prevent the termination of this Easement.

6. **RIGHT OF SPECIFIC PERFORMANCE & PRESERVATION OF RIGHTS:** In addition to all other rights available at law, each Party shall have the right to require the other Party to specifically perform such Party's obligations hereunder, including the right to enjoin the other Party from exercising any right that may interfere with the rights granted hereunder to the other Party. Failure by either party to enforce its rights at any time shall not be deemed a waiver of such rights and waiver of a default by the other Party shall not be deemed a waiver of the Party's right to assert its rights in response to any subsequent or other default.

7. **CREATION OF LIEN.** By execution of this Agreement, Grantee grants Grantor the authority, upon notice, to lien the dominant estate to secure unpaid assessments for the costs of maintenance of the Surface and Air Space Easements Areas as provided herein for the benefit of the City.

8. **NOTICES.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be given (a) when actually received by that Party, (b) when sent via overnight courier service and confirmation of receipt by the addressee is obtained from the courier, or (c) three (3) days after being addressed to the Party at its published address and deposited in the United States mail with postage prepaid, or in registered or certified mail with return receipt requested.

9. **COVENANTS RUNNING WITH THE LAND.** The parties acknowledge and agree that the easements, and other rights conferred in this Easement, and the indemnity and other obligations are intended to, and do, constitute covenants that run with the land of the Burdened Property (servient estate) and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns, including those claiming by, through, or under Grantee as owners and holders of the Easements or holding any rights to the Air Space or Surface Easement Areas, subject only to paragraph 5, Easement Termination, above.

10. **ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the Parties, and supersedes all prior understandings relating to them, whether written or oral.

11. **LEGAL CONSTRUCTION.** This Agreement shall not be construed more or less favorably between the Parties by reason of authorship as both Parties had an opportunity to have the document reviewed by their counsel. This Agreement may be executed in duplicate original counterparts and all copies of this Agreement so executed shall be deemed to be one agreement.

12. **RECORDING.** Grantee shall, at its expense, record this Agreement with the King County Recorder. After this Agreement is recorded, Grantee shall provide Grantor with a copy of the recorded Agreement.

Dated this _____ day of _____, 2021.

CITY OF AUBURN, WASHINGTON

Nancy Backus, Mayor

STATE OF WASHINGTON)
COUNTY OF KING) ss

I hereby certify that I know or have satisfactory evidence that Nancy Backus is the person who appeared before me, and acknowledged that she signed this instrument and on oath stated that she was authorized to execute the instrument as the Mayor of the City of Auburn and acknowledged it to be that party's free and voluntary act for the uses and purposes mentioned in the instrument.

Dated _____

Notary Public in and for the State of _____
Residing at _____
My appointment expires _____

Accepted and Approved by:

AUBURN CITY CENTER SENIOR LIVING ASSOCIATES, LLC
By: Auburn City Center Senior Living Development Associates, LLC,
Its Managing Member

B. M. Park

Bryan M. Park, Manager

4/30/2021

Date

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I hereby certify that I know or have satisfactory evidence that Bryan M. Park is the person who appeared before me, and acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument as the Manager of Auburn City Center Senior Living Development Associates, LLC, the Managing Member of Auburn City Center Senior Living Development, LLC, and acknowledged it to be that party's free and voluntary act for the uses and purposes mentioned in the instrument.

Dated April 30, 2021



Amanda L. Hagen

Notary Public in and for the State of Washington
Residing at Puyallup
My appointment expires 8-9-2022

Exhibit A
Surface Easement Area Legal Description

THE WEST 8.00 FEET TOGETHER WITH THE SOUTH 8.00 FEET, EXCEPT THE EAST 10.00 FEET OF THE SOUTH 8 FEET OF THE FOLLOWING DESCRIBED PARCEL:

LOT 1 AND THE EAST 4 FEET OF LOT 2, BLOCK 2, TOWN OF SLAUGHTER, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 56, IN KING COUNTY, WASHINGTON.

TOGETHER WITH THAT PORTION OF THE VACATED ALLEY WHICH WOULD ATTACH BY OPERATION OF LAW AS PROVIDED BY ORDINANCE NO. 6193 RECORDED SEPTEMBER 12, 2008 UNDER RECORDING NO. 20080912001319.



Exhibit B
Surface Area Easement Depiction

