

VILLAGE OF BARTLETT

COMMITTEE AGENDA

MARCH 20, 2018

COMMUNITY & ECONOMIC DEV., CHAIRMAN GABRENYA

1. Victory Centre Amendments to the Annexation Agreement and PUD Ordinance

FINANCE & GOLF, CHAIRMAN DEYNE

1. 2018-19 Proposed Budget Review (if necessary)



Agenda Item Executive Summary

Item Name Victory Centre Amendments to the Annexation Agreement and PUD Ordinance Committee or Board Committee

BUDGET IMPACT

Amount: N/A Budgeted N/A

List what fund N/A

EXECUTIVE SUMMARY

The petitioner is requesting to:

**Amend the Victory Centre Annexation Agreement, and
Amend the PUD Ordinance #2004-115, Section 5 #8 with Amended Restrictive Covenants**

The Amendments are to replace the existing condition and covenants in these documents with new covenants that would allow for the covenant to be subordinate to the lien and enforcement of the Security Instrument.

This would allow the petitioner to obtain refinancing with loans, insured by the United States Department of Housing and Urban Development (HUD).

The Plan Commission conducted the Public Hearing on the amended PUD Ordinance #2004-115 and recommended approval of the amendment to include the revised covenants.

ATTACHMENTS (PLEASE LIST)

CD Memo, Plan Commission Minutes, Applicant Cover Letter, Application, Location Map, Draft Amended Annexation Agreement and Draft Amended Covenant Language

ACTION REQUESTED

- For Discussion only - To review the Petitioner's requests and forward to the Village Board to conduct the required Annexation Agreement public hearing and a final vote.
- Resolution
- Ordinance
- Motion

Staff: Jim Plonczynski, Com Dev Director Date: 3/12/2018

COMMUNITY DEVELOPMENT MEMORANDUM

18-032

DATE: March 12, 2018
TO: Paula Schumacher, Village Administrator
FROM: Jim Plonczynski, Community Development Director
RE: **(#18-02) Victory Centre of Bartlett**

PETITIONER

Jerry Finis, Pathway to Living and Robyn Sandys, Northwest Housing Partnership on behalf of Bartlett SLF Associates, LP and Bartlett ILF Associates, LP- Victory Centre of Bartlett

SUBJECT SITE

1101-1105 W. Bartlett Road (Southwest corner of Route 59 and W. Bartlett Road)

REQUESTS

Amend the Victory Centre Annexation Agreement, and Amend PUD Ordinance #2004-115, Section Five, #8 (to amend the Restrictive Covenants which are a condition of this Ordinance)

SURROUNDING LAND USE

	<u>Land Use</u>	<u>Comprehensive Plan</u>	<u>Zoning</u>
Subject Site	Senior Housing	Attached Res. High Den.	PD
North	Vacant	Comm./Res.	ER-2, SR-2
South	Hanover Township Offices/Senior Center	Municipal/Institutional	P-1
East	Single Family	Suburban Residential	SR-3
West	Single Family	Estate Residential	R-4*

* Unincorporated Cook County Zoning

BACKGROUND INFORMATION

1. On April 15, 2003 the Village annexed this property and adopted Ordinance #2003-44 which approved the Rezoning, Special Use for a Planned Unit Development and the Site Plan for Bartlett Senior Living Campus. Subsequently, Ordinance #2004-115 was approved which amended the original PUD to allow the petitioner,

Northwest Housing Partnership, to finance this affordable senior housing project by separating the Independent and Assisted Living facilities into two buildings.

2. In the Annexation Agreement, Ordinance #2003-44 and Ordinance #2004-115, a covenant was required to be approved by the Village Attorney and recorded with the property which set the age limit and requirement that the project be permanently and exclusively used as a senior housing development.
3. The proposed amendment would replace the existing condition in Ordinance #2004-115, Section Five, #8 and covenant in these documents with a new covenant that would allow the covenant to be subordinate to the lien, covenants and enforcement of the Security Instrument.
4. The proposed language in these covenants are the reason the Petitioner needs to amend the PUD Ordinance #2004-115 and the restrictive covenants to allow the Amended Covenant to be subordinate to the new mortgage financed by HUD.

RECOMMENDATION

1. The Plan Commission reviewed the Petitioner's request and conducted the public hearing on the Amended Covenants to PUD Ordinance #2004-115 on March 8, 2018.
2. The Plan Commission recommended **approval** of the PUD Covenant Amendment subject to the following conditions and findings of fact;
 - a. The amended covenants shall be recorded as part of the Amended Annexation Agreement that is subject to a public hearing and approval by the Village Board.
 - b. Findings of fact (Planned Unit Development);
 - i. The Village's Future Land Use Plan designates this area as Attached Residential-High Density (14-34 du/net acre) that has been established in the area and which conforms with general planning policies and precedents of the Village;
 - ii. The senior housing development is a permitted use in the PD Zoning District;
 - iii. The senior housing development is designed, located and proposed to be operated and maintained so that the public health, safety and welfare will not be endangered or detrimentally affected;
 - iv. The senior housing development shall not substantially lessen or impede the suitability for uses and development of, or be injurious to the use and enjoyment of, or substantially diminish or impair the value of, or be incompatible with, other property in the immediate vicinity;
 - v. The senior housing development shall include impact donations;
 - vi. Adequate utilities and drainage shall be provided for this use;

- vii. Adequate parking and ingress and egress will be provided for this use so as to minimize traffic congestion and hazards in public streets;
 - viii. Adequate buffering and landscaping shall be provided to protect uses within the development and on surrounding properties;
 - ix. There is reasonable assurance that this facility will continue to operate as it has and be adequately maintained.
3. The minutes of the Plan Commission's public hearing, a draft of the Amended Annexation Agreement, a draft of the Amended Covenants to PUD Ordinance #2004-115 and background information are attached for your review.
4. The next step in the process for this petition is to hold a public hearing on the Amended Annexation Agreement and to have a final vote on the Amended Annexation Agreement and the Amended PUD condition and covenants.

/jjp/attachments

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Village of Bartlett
Plan Commission Meeting Minutes
March 8, 2018

(#18-02) Victory Centre of Bartlett

Amend PUD Ordinance #2004-115 Section Five, #8, An Ordinance Approving An Amended Planned Unit Development Plan, Approving Of An Amended Site Plan And Approving Of A Preliminary/Final Plat Of Subdivision/PUD For The Bartlett Senior Living Campus (To Amend The Restrictive Covenants That Are A Condition Of This Ordinance)

PUBLIC HEARING

Exhibit A - Picture of Sign

Exhibit B - Mail Affidavit

Exhibit C - Notification of Public Hearing Notice in Newspaper

M. Hopkins recused himself for this item because he was on the project team for this development.

J. Plonczynski stated Victory Centre of Bartlett is looking into refinancing their project. This will not change the Site Plan, the PUD, or the layout of either of the buildings. In the PUD ordinance that was approved in 2004, section 5, #8, there is a condition that the covenant needs to be approved by the Village Attorney in a recordable form that states the development be primarily senior housing. This must comply with the Fair Housing amendments. The revised covenant is attached in the packet for both the senior housing and independent living. Being that the refinancing is by HUD, the conditions in the PUD ordinance and covenants will need to be reflected in the new mortgage. There is a condition in the annexation agreement so this will also need to be changed.

J. Lemberg asked staff if there were any questions or comments.

Petitioners: Attorney, Steven Friedland and Cassidy Stachowicz were sworn in by J. Lemberg.

S. Friedland stated this development was approved in 2004, consisting of two buildings. 104 unit independent living facility and a 104 senior supportive living facility. Nothing will be done to the actual development, they are just looking into refinancing both buildings, financing that is insured by HUD. HUD has very strict rules, when they provide a HUD insured mortgage on a property, any restrictive covenants must be subordinate to the HUD mortgage. If HUD were to foreclose on a property, they require that the property not have any restrictions that are in front of the Federal Government. The zoning will remain as currently stated, which restricts the land and facility to senior housing. The restrictive covenant is the only reason this project needs to be amended, in the event HUD would need to foreclose, the HUD mortgage need to be senior to the Villages prior restrictions. Also, a modification is requested on the annexation agreement as well.

J. Lemberg stated there are 104 units in each building, and asked how many units are vacant at this time. **C. Stachowicz** stated in the independent living building there are 2-3 vacant units and in the supportive living building there are 5-7 vacant units. This is a very low vacancy rate for affordable independent and supportive living. **J. Lemberg** asked what the chances would be that HUD would allow a resident under 55 years old. **S. Friedland** stated this would not happen because the refinancing would be under the current restrictions for zoning and the annexation agreement. The refinancing is limited to senior housing, 55 and older. **J. Lemberg** asked if they foreclosed could they say this would be open to all age groups. **S. Friedland** stated if HUD did foreclose it does intend to keep the private restrictive covenants that would be behind its mortgage so that wouldn't be an impediment to HUD but the zoning would be an impediment to HUD. If a private bank foreclosed on this property it would take title to the property, subject to the existing zoning, which has a 55 and



**Village of Bartlett
Plan Commission Meeting Minutes
March 8, 2018**

older restriction which they are not asking to change. HUD would be subject to that same restriction.

J. Lemberg asked if any members had any questions or comments. No one came forward.

The Public Hearing portion of the meeting was open to the Public. No one came forward.

The Public Hearing portion of the meeting was closed.

J. Lemberg then asked for a motion to approve the Petitioner's requests for the Amended Covenants, PUD Ordinance #2004-115, Section Five, #8, subject to the conditions and Findings of Fact.

Motioned by: J. Kallas
Seconded by: J. Miaso

Roll Call

Ayes: J. Miaso, D. Negele, J. Allen, J. Kallas and A. Hopkins
Nays: None

The motion carried.

440 South LaSalle Street, Suite 1900
Chicago, IL 60605
p 312-491-4400
f 312-491-4411
att-law.com

312-491-2207
sfriedland@att-law.com

January 29, 2018

Via Email and Federal Express

Village of Bartlett
c/o Jim Plonczynski
Community Development Department
228 S. Main Street
Bartlett, IL 60103

Re: Victory Centre of Bartlett
1101-1105 W. Bartlett Road

Dear Mr. Plonczynski:

Our law firm represents Bartlett ILF Associates, L.P. and Bartlett SLF Associates, L.P., the owners of the 104-unit senior independent living facility and the 104-unit senior supportive living facility, respectively, known as Victory Centre of Bartlett. The development was approved in accordance with an Annexation and Development Agreement dated May 7, 2002, as amended (the "Annexation Agreement"), and a Planned Unit Development approved in accordance with the Annexation Agreement (the "PUD"). A Restrictive Covenant was also recorded against the subject property in connection with the approvals (the "Restrictive Covenant").

Both owners intend to refinance their respective properties with HUD insured loans. HUD rules require that any restrictive covenants be subordinated to the liens, covenants and enforcement of the HUD financing.

Therefore, the owners request that the Village of Bartlett amend the Annexation Agreement, the PUD and the Restrictive Covenant in order to facilitate any HUD financing.

Attached please find the following:

- Completed Development Application
- Draft Amendment Three to Annexation and Development Agreement

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COMMUNITY DEVELOPMENT

JAN 30 2018

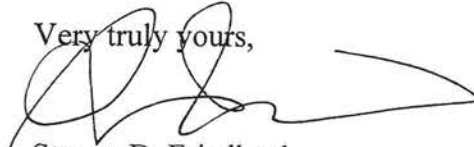
VILLAGE OF
BARTLETT

- Draft Amendment to Restrictive Covenant (relating to the ILF)
- Draft Second Amendment to Restrictive Covenant (relating to the SLF)
- List of property owners within 250 feet of the subject property.

You will receive, by separate letter, the application fee of \$600.00.

We look forward to working with you on this process.

Very truly yours,



Steven D. Friedland



VILLAGE OF BARTLETT DEVELOPMENT APPLICATION

For Office Use Only
Case # 18-02
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VILLAGE OF
BARTLETT

PROJECT NAME Victory Centre of Bartlett

PETITIONER INFORMATION (PRIMARY CONTACT)

Name: Bartlett SLF Associates, LP and

Bartlett ILF Associates, LP

Street Address: 1101 - 1105 W. Bartlett Road

City, State: Bartlett, IL

Zip Code: 60103

Email Address: JFinis@pathwaytoliving.com

Phone Number: 312-837-0701

Preferred Method to be contacted: Email

PROPERTY OWNER INFORMATION

Name: Same as Petitioner

Street Address: _____

City, State: _____

Zip Code: _____

Phone Number: _____

OWNER'S SIGNATURE: [Signature]

Date: 1-29-18

(OWNER'S SIGNATURE IS REQUIRED or A LETTER AUTHORIZING THE PETITION SUBMITTAL.) Second Owner Signature: [Signature] Date: 1-29-18

ACTION REQUESTED (Please check all that apply)

- Annexation
 - PUD (preliminary)
 - PUD (final)
 - Subdivision (preliminary)
 - Subdivision (final)
 - Site Plan (please describe use: commercial, industrial, square footage): _____
 - Unified Business Center Sign Plan
 - Other (please describe) Amendment to Annexation Agreement; Planned Unit Development and Restrictive Covenants
- Text Amendment
 - Rezoning See Dropdown to See Dropdown
 - Special Use for: _____
 - Variation: _____

SIGN PLAN REQUIRED? No

(Note: A Unified Business Center Sign Plan is required for four or more individual offices or businesses sharing a common building entrance or private parking lot.)

PROPERTY INFORMATION

Common Address/General Location of Property: 1101 - 1105 W. Bartlett Road

Property Index Number ("Tax PIN"/"Parcel ID"): 06-33-400-023; 06-33-401-015

Zoning: Existing: PD
(Refer to Official Zoning Map)

Land Use: Existing: Residential

Proposed: PD

Proposed: Residential

Comprehensive Plan Designation for this Property: See Dropdown
(Refer to Future Land Use Map)

Acreage: 5.94 acres

For PUD's and Subdivisions:

No. of Lots/Units: 104 independent senior units and 104 supportive senior units

Minimum Lot: Area _____ Width _____ Depth _____

Average Lot: Area _____ Width _____ Depth _____

APPLICANT'S EXPERTS (If applicable, including name, address, phone and email)

Attorney Steve Friedland, Applegate & Thorne-Thomsen
440 S. LaSalle Street, Suite 1900, Chicago, IL 60605
312-491-2207; sfriedland@att-law.com

Engineer _____

Other _____

ACKNOWLEDGEMENT

I understand that by signing this form, that the property in question may be visited by village staff and Board/Commission members throughout the petition process and that the petitioner listed above will be the primary contact for all correspondence issued by the village.

I certify that the information and exhibits submitted are true and correct to the best of my knowledge and that I am to file this application and act on behalf of the above signatures.

Any late, incomplete or non-conforming application submittal will not be processed until ALL materials and fees have been submitted.

SIGNATURE OF PETITIONER: 

PRINT NAME: Bartlett ILF Associates, LP and Bartlett SLF Associates, LP

DATE: 1-29-18

REIMBURSEMENT OF CONSULTANT FEES AGREEMENT

The undersigned hereby acknowledges his/her obligation to reimburse the Village of Bartlett for all necessary and reasonable expenses incurred by the Village for review and processing of the application. Further, the undersigned acknowledges that he/she understands that these expenses will be billed on an ongoing basis as they are incurred and will be due within thirty days. All reviews of the petition will be discontinued if the expenses have not been paid within that period. Such expenses may include, but are not limited to: attorney's fees, engineer fees, public advertising expenses, and recording fees. Please complete the information below and sign.

NAME OF PERSON TO BE BILLED: Bartlett ILF Associates, L.P.

ADDRESS: c/o North West Housing Partnership
1701 E. Woodfield Drive, Suite 203 Schaumburg, IL 60173

PHONE NUMBER: 847-969-0561

EMAIL: robysandys@nwHP.net

SIGNATURE: 

DATE: 1/29/18

LOCATION MAP

1101 W. Bartlett Rd.

PINS: 0-63-340-1015, 06-33-401-014,
06-33-400-023 & 06-33-400-022



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES
DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo
the GIS User Community

AMENDMENT THREE TO ANNEXATION AND DEVELOPMENT AGREEMENT

THIS AMENDMENT THREE TO ANNEXATION AND DEVELOPMENT AGREEMENT (this "**Amendment**") is made and entered into this ___ day of _____, 2018, between the Village of Bartlett, Illinois (hereinafter referred to as the "**Village**"), North West Housing Partnership, an Illinois not-for-profit corporation ("**NWHP**"), Bartlett SLF Associates, L.P., an Illinois limited partnership ("**SLF Owner**"), Bartlett ILF Associates, L.P., an Illinois limited partnership ("**ILF Owner**"), Bartlett SLF Associates, In., an Illinois corporation ("**SLF Corporation**"), and Pathway Development, LLC, an Illinois limited liability company ("**Developer**").

WITNESSETH:

WHEREAS, the real estate legally described on Exhibit A attached hereto ("**ILF Property**") and the real estate legally described on Exhibit B attached hereto ("**SLF Property**"; together with the ILF Property, the "**Property**") were annexed to the Village in accordance with that certain Annexation and Development Agreement dated May 7, 2002 by and between the Village, NWHP, LaSalle Bank National Association, as successor Trustee to the First National Bank of Elgin, as Trustee under a Trust Agreement dated October 24, 1977 and known as Trust No. 2728 ("**Trustee**"), and Walter J. Lynwood, as Trustee of the Dominic Accorsi Non-Marital Trust, the sole beneficiary of said trust, dated March 2, 1999 ("**Lynwood**") (the "**Original Agreement**"), as amended by that certain First Amendment to the Annexation and Development Agreement dated April 15, 2003 between NWHP, the Trustee and Lynwood ("**First Amendment**"), as amended by that certain Amendment Two to the Annexation and Development Agreement dated August 17, 2004 between the Village, NWHP, SLF Owner, SLF Corporation, and Developer ("**Second Amendment**"; the Original Agreement, as modified by the First Amendment and Second Amendment is hereby referred to as the "**Agreement**"); and

WHEREAS, on or about May 7, 2002, the Village, by and through its President and Board of Trustees (collectively, the "**Corporate Authorities**"), adopted an ordinance which annexed the unincorporated section of the Property to the Village of Bartlett; and on April 15, 2003, the Village adopted an ordinance which (a) rezoned the Property to PD Planned Development District; (b) granted a special use permit for a Planned Unit Development as a single building Senior Housing Campus pursuant to the Planned Unit Development Plan as defined in Village Ordinance 2003-44 (the "**Original PUD**"); and (c) approved of a site plan for a single building Senior Housing Campus as defined in said Ordinance 2003-44 (the "**Original Site Plan**"); and

WHEREAS, for purposes of obtaining financing sources, including, but not limited to, first mortgages and low income housing tax credits, the independent and assisted or supportive components of the Senior Housing Campus must be housed in separate buildings as an independent living facility ("**ILF**") located on the ILF Property and a supportive living facility ("**SLF**") located on the SLF Property; and

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JAN 30 2018

VILLAGE OF
BARTLETT

WHEREAS, on or about September 13, 2003, NWHP purchased the ILF Property from the Trustee and Lynwood, and on or about December 15, 2005, the ILF Owner purchased the ILF Property from NWHP; and

WHEREAS, the SLF Owner is the owner of the SLF Property, and NWHP and the SLF Corporation are direct or indirect owners of the SLF Owner (the ILF Owner and the SLF Owner are each an “**Owner**”); and

WHEREAS, Developer was the developer of both the SLF and the ILF; and

WHEREAS, pursuant to Ordinance 2004-115, the Village modified the Original PUD and the Original Site Plan approved by the Corporate Authorities to provide for two separate buildings on two subdivided lots with shared parking, shared access and a revised layout, all as more fully appeared in the Amended Planned Unit Development Plan, Amended Site Plan and Final Plat as defined and approved in such Ordinance 2004-115 (collectively, the “**Amended Planned Unit Development**”); and

WHEREAS, as one of the conditions of Amended Planned Unit Development, the Village required covenants in recordable form to place certain age restrictions on the ILF Property and the SLF Property (“**Age Restrictions**”); and

WHEREAS, the ILF Owner and the SLF Owner have completed the development of the ILF and the SLF, respectively, and desire to refinance the existing loans on the ILF Property and the SLF Property, respectively, with loans insured by the United States Department of Housing and Urban Development (“**HUD**”); and

WHEREAS, HUD requires certain modifications to the Age Restrictions in order to make the ILF Property and the SLF Property eligible for HUD-insured loans, which requires an amendment to the age restriction condition of the Amended Planned Unit Development; and

WHEREAS, pursuant to notice duly given as required by law, the Village of Bartlett Plan Commission conducted a public hearing on the amendment to the age restriction condition of the Amended Planned Unit Development, and adopted findings of fact thereto and has recommended its approval to the Corporate Authorities; and

WHEREAS, pursuant to notice duly given as required by law, the Corporate Authorities conducted a public hearing on this Amendment, and find that it is in the public interest to approve this Amendment and are prepared to make and will make the requisite findings of fact with respect to the amendment to the age restriction condition with respect to the special use permit for the Amended Planned Unit Development Plan;

NOW THEREFORE, in consideration of the matters set forth in the recitals, the mutual covenants and agreements of each party to the contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties do hereby mutually agree as follows:

1. Incorporation of Recitals. The above recitals are found to be true and correct and are hereby made a part of this Amendment. Capitalized terms not defined herein shall have the same meaning as set forth in the Agreement.

2. Section 1, paragraph 1, subparagraph (c), clause (h) of the Agreement is deleted and the following substituted therefor:

(h) covenants in recordable form approved by the Village Attorney to ensure that the Property will be used for senior housing and that the ILF and the SLF shall each be operated for occupancy of persons 55 years of age or older pursuant to Housing for Older Persons Act of 1995, as amended (“**HOPA**”), and that at least 80% of the occupied apartments in each of the ILF and the SLF shall at all times be occupied by at least one person who is at least 55 years of age or older (the “**Restrictive Covenant**”); provided that the Restrictive Covenant may be amended pursuant to an amendment or amendments substantially in the form attached hereto as Exhibit C (subject to changes to the HUD required forms), with such changes, deletions and insertions as shall be approved by the Village Attorney.

3. Section 21 of Agreement is deleted and the following substituted therefor:

Within five days after the sale, transfer or assignment of all or any part of the SLF Property or the ILF Property, the respective Owner shall notify the Village thereof.

4. Notwithstanding anything to the contrary in the Agreement, in the event of a foreclosure (or deed in lieu of foreclosure) of a mortgage insured by HUD secured by the ILF Property or the SLF Property, any provision in this Agreement limiting occupancy to persons of a certain age shall terminate with respect to such portion of the Property, provided, however, that such portion of the Property shall remain subject to Bartlett Zoning Ordinance.

5. Section 23 of the Agreement is deleted and the following is substituted therefor:

23. Notice. Unless otherwise notified in writing, all notices, requests, and demands shall be in writing and shall be delivered either personally, by certified mail, return receipt requested, by messenger or by a nationally recognized overnight courier, as follows:

If to the Village: Village Administrator
Village of Bartlett
228 South Main Street
Bartlett, Illinois 60103

With a copy to: Bryan E. Mraz
Bryan E. Mraz & Associates
111 East Irving Park Road
Roselle, Illinois 60172

If to ILF Owner
or to NWHP: Bartlett ILF Associates, L.P.
 c/o North West Housing Partnership
 1701 E. Woodfield Drive, Suite 203
 Schaumburg, IL 60173

With a copy to: Applegate & Thorne-Thomsen, P.C.
 440 South LaSalle, Suite 1900
 Chicago, Illinois 60605
 Attn : Matthew Brett

If to SLF Owner
or to SLF Corp.
Or Developer: Bartlett SLF Associates, L.P.
 c/o Pathway to Living
 333 W. Wacker Drive, Suite 1010
 Chicago, Illinois 60606

With a copy to: Applegate & Thorne-Thomsen, P.C.
 440 South LaSalle, Suite 1900
 Chicago, Illinois 60605
 Attn : Matthew Brett

6. This Amendment may be executed in any number of counterparts and duplicate originals, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

[Signatures on the following page]

ILF OWNER:

BARTLETT ILF ASSOCIATES, L.P.,
an Illinois limited partnership

By: NWHP Bartlett ILF, Inc.,
an Illinois corporation
Its General Partner

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY that _____, as _____ of NWHP Bartlett ILF,
Inc., an Illinois corporation and general partner of Bartlett ILF Associates, L.P., an Illinois
limited partnership, personally known to me to be the same person whose name is subscribed to
the foregoing instrument, appeared before me this day in person and acknowledged that he
signed and delivered the said instrument as his own free and voluntary act, and as the free and
voluntary act of said corporation as the general partner of Bartlett ILF Associates, L.P., for the
uses and purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 201__.

Notary Public

SLF OWNER:

BARTLETT SLF ASSOCIATES, L.P.,
an Illinois limited partnership

By: Bartlett SLF Associates, Inc.,
an Illinois corporation
Its General Partner

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of Bartlett SLF Associates, Inc., an Illinois corporation and general partner of Bartlett SLF Associates, L.P., an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation as the general partner of Bartlett SLF Associates, L.P., for the uses and purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 201__.

Notary Public

SLF CORPORATION:

BARTLETT SLF ASSOCIATES, INC.,
an Illinois corporation

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of Bartlett SLF Associates, Inc., an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 201__.

Notary Public

DEVELOPER:

PATHWAY DEVELOPMENT, LLC,
an Illinois limited liability company

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of Pathway Development, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal this ____ day of _____, 201__.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF ILF PROJECT

LOT 2 IN THE FINAL PLAT OF SUBDIVISION OF BARTLETT SENIOR LIVING CAMPUS BEING A SUBDIVISION IN THE SOUTHEAST ¼ OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 18, 2005 AS DOCUMENT 0519919064, IN COOK COUNTY, ILLINOIS.

Common Address: 1105 W. Bartlett Road, Bartlett, IL 60103

PIN: 06-33-400-023-0000; 06-33-401-015-0000

EXHIBIT B

LEGAL DESCRIPTION OF SLF PROJECT

LOT 1 IN THE FINAL PLAT OF SUBDIVISION OF BARTLETT SENIOR LIVING CAMPUS BEING A SUBDIVISION IN THE SOUTHEAST ¼ OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 18, 2005 AS DOCUMENT 0519919064, IN COOK COUNTY, ILLINOIS.

Common Address: 1101 W. Bartlett Road, Bartlett, IL 60103

PIN: _____

EXHIBIT C

FORMS OF HUD AMENDMENTS

[See attached]

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:

Matthew C. Brett, Esq.
Applegate & Thorne-Thomsen, P.C.
440 S. LaSalle Street, Suite 1900
Chicago, Illinois 60605
Permanent Index Tax
Identification No(s).
SEE EXHIBIT A

Property Address:
SEE EXHIBIT A

AMENDMENT TO RESTRICTIVE COVENANT

This AMENDMENT TO RESTRICTIVE COVENANT ("Amendment") is made as of _____, 201__, by BARTLETT ILF ASSOCIATES, L.P., an Illinois limited partnership ("ILF Owner"), BARTLETT SLF ASSOCIATES, L.P., an Illinois limited partnership ("SLF Owner") and VILLAGE OF BARTLETT, ILLINOIS, an Illinois municipal corporation ("Village").

WHEREAS, ILF Owner is obtaining financing from Love Funding Corporation (the "Lender") for the benefit of the project known as Victory Centre of Bartlett ILF, Bartlett, Cook County, Illinois, HUD Project No. 071-_____ (the "Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated effective as of _____ 1, 201__, recorded or to be recorded in the Office of the Recorder of Cook County, Illinois (the "Recorder's Office") and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Village approved the Project, and in connection with such approval, Village required certain restrictions be recorded against the Project; and

WHEREAS, North West Housing Partnership (as predecessor in interest to ILF Owner), and the SLF Owner are parties to that certain Restrictive Covenant with respect to the Project, more particularly described in Exhibit A attached hereto, and certain other real estate legally described in Exhibit B attached hereto, dated as of June 2005 and recorded in the Recorder's Office as Document 0519418067 (collectively, the "Restrictive Covenants");

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

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WHEREAS, the Village, SLF Owner and ILF Owner have agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan (as defined below) in accordance with the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between ILF Owner and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means Love Funding Corporation, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the ILF Owner pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from ILF Owner in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). ILF Owner covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any

conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Village's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The ILF Owner represents and warrants that to the best of ILF Owner's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate with respect to the Project.

(e) ILF Owner, SLF Owner and Village acknowledge that ILF Owner's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) In enforcing the Restrictive Covenants, the Village will not file any claim against the Project, the Mortgage Loan proceeds or any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available Surplus Cash, if the ILF Owner is a for-profit entity;
- ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the ILF Owner is a limited distribution entity;
- iii. Available Residual Receipts authorized by HUD, if the ILF Owner is a non-profit entity; or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, ILF Owner, SLF Owner and Village shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters or a HUD required amendment with respect to the real estate owned by the SLF Owner in connection with a HUD insured loan, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Village may require the ILF Owner to indemnify and hold the Village harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Village relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that all ILF Owner's obligations to indemnify and hold the Village harmless under the Restrictive Covenants shall be limited to available surplus cash and/or residual receipts of the ILF Owner.

(i) Section 2 of the Restrictive Covenants is hereby amended and restated in its entirety as follows:

“2. The Parties agree that the SLF Property and the NWHP Property shall be used exclusively and permanently for senior housing and that the improvements and facilities when built shall be operated for occupancy of persons 55 years of age or older pursuant to Housing for Older Persons Act of 1995 (“HOPA”), and that at least 80% of the occupied apartments in the Development shall at all times be occupied by at least one person who is at least 55 years of age or older (the “Restriction”). To the extent the Restriction violates any federal or state law, rule or regulation, including, but not limited to, the Federal Fair Housing Amendments Act of 1988, as amended, and the regulations promulgated thereunder, the Restriction shall automatically be amended to comply with such federal and state laws, rules and regulations and to the extent possible still comply with the intent of this Restrictive Covenant which is to ensure that the Development continues to be used exclusively and permanently for senior housing. To the extent any current or future federal and state laws now or in the future may conflict with one another, the least restrictive law, rule and regulation shall apply and the Restriction shall be automatically modified and amended to comply therewith and still preserve the Parties’ intent hereunder.”

(j) This Amendment may be executed in several counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on all of the parties, notwithstanding that all parties are signatory to the original or the same counterpart. Any such counterpart shall be admissible into evidence as an original hereof against the party who executed it.

(Signature Pages Follow)

OWNER:

BARTLETT ILF ASSOCIATES, L.P.,
an Illinois limited partnership

By: NWHP Bartlett ILF, Inc.,
an Illinois corporation
Its General Partner

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY that _____, as _____ of NWHP Bartlett ILF,
Inc., an Illinois corporation and general partner of Bartlett ILF Associates, L.P., an Illinois
limited partnership, personally known to me to be the same person whose name is subscribed to
the foregoing instrument, appeared before me this day in person and acknowledged that he
signed and delivered the said instrument as his own free and voluntary act, and as the free and
voluntary act of said corporation as the general partner of Bartlett ILF Associates, L.P., for the
uses and purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 201__.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT

LOT 2 IN THE FINAL PLAT OF SUBDIVISION OF BARTLETT SENIOR LIVING CAMPUS BEING A SUBDIVISION IN THE SOUTHEAST $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 18, 2005 AS DOCUMENT 0519919064, IN COOK COUNTY, ILLINOIS.

Common Address: 1105 W. Bartlett Road, Bartlett, IL 60103

PIN: 06-33-400-023-0000; 06-33-401-015-0000

EXHIBIT B

LEGAL DESCRIPTION OF SLF

LOT 1 IN THE FINAL PLAT OF SUBDIVISION OF BARTLETT SENIOR LIVING CAMPUS BEING A SUBDIVISION IN THE SOUTHEAST ¼ OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 18, 2005 AS DOCUMENT 0519919064, IN COOK COUNTY, ILLINOIS.

Common Address: 1101 W. Bartlett Road, Bartlett, IL 60103

PIN: _____

**THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:**

_____, Esq.
Applegate & Thorne-Thomsen, P.C.
440 S. LaSalle Street, Suite 1900
Chicago, Illinois 60605
Permanent Index Tax
Identification No(s).
SEE EXHIBIT A

Property Address:
SEE EXHIBIT A

SECOND AMENDMENT TO RESTRICTIVE COVENANT

This AMENDMENT TO RESTRICTIVE COVENANT ("Amendment") is made as of _____, 201____, by BARTLETT SLF ASSOCIATES, L.P., an Illinois limited partnership ("SLF Owner"), BARTLETT ILF ASSOCIATES, L.P., an Illinois limited partnership ("ILF Owner") and VILLAGE OF BARTLETT, ILLINOIS, an Illinois municipal corporation ("Village").

WHEREAS, SLF Owner is obtaining financing from _____, (the "Lender") for the benefit of the project known as Victory Centre of Bartlett SLF, Bartlett, Cook County, Illinois, FHA Project No. _____ (the "Project"), which loan is secured by a Healthcare Mortgage, Assignment of Leases, Rents and Revenue and Security Agreement ("Security Instrument") dated effective as of _____, 20____, recorded or to be recorded in the Office of the Recorder of Cook County, Illinois (the "Recorder's Office") and will be insured by the United States Department of Housing and Urban Development ("HUD") and which is refinancing the existing HUD-insured loan on the Project;

WHEREAS, Village approved the Project, and in connection with such approval, Village required certain restrictions be recorded against the Project; and

WHEREAS, North West Housing Partnership (as predecessor in interest to ILF), and the SLF Owner are parties to that certain Restrictive Covenant with respect to the Project, more particularly described in Exhibit A attached hereto, and certain other real estate legally described in Exhibit B attached hereto, dated as of June 2005 and recorded in the Recorder's Office as Document 0519418067, as amended by that certain Amendment to Restrictive Covenant dated as of _____, 2018 and recorded in the Recorder's Office as Document _____ (collectively, the "Restrictive Covenants");

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

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VILLAGE OF

WHEREAS, the Village, ILF Owner and SLF Owner have agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan (as defined below) in accordance with the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means collectively, the Healthcare Regulatory Agreement - Borrower between SLF Owner and HUD with respect to the Project, and the Healthcare Regulatory Agreement – Operator between Bartlett SLF Associates, L.P. and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means _____, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the SLF Owner pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from SLF Owner in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD

Requirements”). SLF Owner covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Village’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The SLF Owner represents and warrants that to the best of SLF Owner’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate with respect to the Project.

(e) SLF Owner, ILF Owner and Village acknowledge that SLF Owner’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) In enforcing the Restrictive Covenants, the Village will not file any claim against the Project, the Mortgage Loan proceeds or any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available Surplus Cash, if the SLF Owner is a for-profit entity;
- ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the SLF Owner is a limited distribution entity;
- iii. Available Residual Receipts authorized by HUD, if the SLF Owner is a non-profit entity; or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, SLF Owner, ILF and Village shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Village may require the SLF Owner to indemnify and hold the Village harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Village relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that all SLF Owner’s obligations to indemnify and hold the Village harmless under the Restrictive Covenants shall be limited to available surplus cash and/or residual receipts of the SLF Owner.

(i) This Amendment may be executed in several counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on all of the parties, notwithstanding that all parties are signatory to the original or the same counterpart.

Any such counterpart shall be admissible into evidence as an original hereof against the party who executed it.

(Signature Pages Follow)

OWNER:

BARTLETT SLF ASSOCIATES, L.P.,
an Illinois limited partnership

By: Bartlett SLF Associates, Inc.,
an Illinois corporation
Its General Partner

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of Bartlett SLF Associates, Inc., an Illinois corporation and general partner of Bartlett SLF Associates, L.P., an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation as the general partner of Bartlett SLF Associates, L.P., for the uses and purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 201__.

Notary Public

ILF:

BARTLETT ILF ASSOCIATES, L.P.,
an Illinois limited partnership

By: NWHP Bartlett ILF, Inc.,
an Illinois corporation
Its General Partner

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of NWHP Bartlett ILF, Inc., an Illinois corporation and general partner of Bartlett ILF Associates, L.P., an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation as the general partner of Bartlett ILF Associates, L.P., for the uses and purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 201__.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT

LOT 1 IN THE FINAL PLAT OF SUBDIVISION OF BARTLETT SENIOR LIVING CAMPUS BEING A SUBDIVISION IN THE SOUTHEAST ¼ OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 18, 2005 AS DOCUMENT 0519919064, IN COOK COUNTY, ILLINOIS.

Common Address: 1101 W. Bartlett Road, Bartlett, IL 60103

PIN: _____

EXHIBIT B

LEGAL DESCRIPTION OF ILF

LOT 2 IN THE FINAL PLAT OF SUBDIVISION OF BARTLETT SENIOR LIVING CAMPUS BEING A SUBDIVISION IN THE SOUTHEAST ¼ OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 18, 2005 AS DOCUMENT 0519919064, IN COOK COUNTY, ILLINOIS.

Common Address: 1105 W. Bartlett Road, Bartlett, IL 60103

PIN: 06-33-400-023-0000; 06-33-401-015-0000