

**GOOD NEIGHBOR AGREEMENT  
CHERRYWOOD POINT INVESTMENT/LOWRY SENIOR LIVING AND LOWRY UNITED  
NEIGHBORHOODS**

This Good Neighbor Agreement (this "Agreement") is made as of \_\_\_\_\_, 2021 (the "Effective Date") by and between Cherrywood Pointe Investment LLC, a Minnesota limited liability company ("Developer") and Lowry United Neighborhoods, a Colorado cooperative association ("LUN"), with respect to the following facts:

**RECITALS**

A. Developer and Bishop Machebeuf High School, Inc., a Colorado nonprofit corporation ("Seller") entered into a Purchase and Sale Agreement (as amended, the "PSA"), dated November 10, 2020, for the real property located at 8890 East Lowry Boulevard in the City and County of Denver (the "City").

B. Developer wishes to develop the Property into approximately 300 units in two buildings, an Active Adult 55+ for rent building ("AA Building") and an Assisted Living and Memory Care building (collectively, the "Project"). Developer seeks to have the Property rezoned from its current designation of R-4 to S-MX-5 which will permit the development of the Project ("Rezoning").

C. In connection with the proposed Rezoning of the Property, Developer has engaged in extensive community outreach in the Lowry neighborhood in order to obtain the community's feedback on and support of the Project.

D. Developer voluntarily initiated discussions on this Agreement with LUN to further demonstrate its commitment to continued collaboration and to actively address the issues articulated by LUN during the community outreach process.

E. In order to address LUN's concerns about the availability affordable housing and recreational spaces in the Lowry neighborhood, as well as in satisfaction of the linkage fee requirements set forth in Chapter 27 of the Denver Revised Municipal Code, Developer is voluntarily agreeing to provide affordable housing units within the Project and is agreeing to provide outdoor recreational space on the Property for the benefit of the residents of Lowry.

F. Developer and LUN are sometimes hereinafter referred to individually as a "Party" and together as the "Parties".

G. The Parties have agreed to execute this Agreement in order to memorialize their agreements relative to the obligations set forth below.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree as follows:

**AGREEMENT**

1. **Obligations of Developer.**

a. Affordable Housing: Upon final, unappealed and unappealable approval of the Rezoning, Developer shall execute that certain Agreement to Build Affordable Units in favor of the City, which such agreement obligates Developer to make not less than 10% of all residential units constructed

within the AA Building on the Property income restricted for rent to tenants making not more than 80% AMI for a period of 99 years.

b. Open Spaces: The Developer agrees to the following:

1. Easement: Upon acquiring the Property from Seller, Developer will provide a permanent easement to the City for public use of the existing trail on the Property running along Westerly Creek.

2. Benches and Landscaping: Developer agrees to provide benches and appropriate landscaping along the existing Westerly Creek trail on the Property, all as shown and approved in Developer's site development plan for the Project, subject to City review and approval of the same.

3. Recreational Programing: Developer agrees to pursue opportunities for recreational programming on the Property that would be available to the public, subject to review and approval of such uses by the City.

2. Obligations of LUN.

a. Project Support: In consideration of the rights and benefits to LUN and the neighborhood provided by Developer in this Agreement, LUN hereby agrees to not engage in any public or private actions or lobbying against any portion of the Property, Project, or City Council approval of the Rezoning. Additionally, LUN agrees to prepare and deliver to Planning Board and City Council letters of support of the Project and the Rezoning (each, a "**Support Letter**"), in a timely manner to ensure the Support Letters are delivered to City Council prior to any hearings related to the Property, Project, or the Rezoning.

3. Relationship to Rezoning Approval: If the City Council fails to approve the Rezoning, then this Agreement and the obligations described herein shall automatically terminate and be of no further force or effect.

4. Miscellaneous.

a. Recording. The Parties agree that this Agreement shall not be recorded by either party. In the event of any recording, it shall automatically terminate and become null and void.

b. Benefits and Obligations. The covenants and agreements contained herein shall inure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, successors and assigns; provided, however, in no event shall LUN be permitted to assign any of its right, title and interest in and to this Agreement. Developer reserves the right to assign its obligations to an affiliate that may purchase the Property. The Parties agree that there are no other third party beneficiaries to this Agreement.

c. Run with the Land: The terms and conditions described herein shall not run with the land.

d. Breach. If any Party hereto breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof (or such longer period as is reasonably required to complete such cure, as long as the breaching Party has commenced and is diligently pursuing such cure), the non-breaching party shall be entitled to actual damages and specific performance. Each Party hereto expressly waives any right to recover and agrees not to seek injunctive relief or consequential, indirect, special, or punitive damages.

e. Governing Law. This Agreement is governed by the laws of the State of Colorado. The Parties irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out

of or relating to this Agreement. In the event either party hereto commences litigation or arbitration to enforce its rights hereunder, the substantially prevailing party in such proceeding shall recover from the other party its reasonable attorneys' fees and expenses incidental to such proceeding, including the cost of appeals.

f. Authority. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the Party on whose behalf it is so executing.

g. Construction; Disclaimer of Joint Venture. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event of any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. This Agreement is not intended to create a joint venture, partnership or agency relationship between Developer and LUN, and such joint venture, partnership, or agency relationships is specifically hereby disclaimed.

h. Severability. The provisions of this Agreement are severable, and if any provisions are held to be illegal, invalid or unenforceable, such holding does not affect the legality, validity or enforceability of any other provision. In such event, the remaining provisions of this Agreement shall be enforced so as to give effect to the intent of the Parties in entering into this Agreement.

i. Amendment. This Agreement may be amended or supplemented by additional written agreements, sections or certificates, as may be mutually determined in writing by the Parties from time to time to be necessary, appropriate or desirable to further the purpose hereof, to clarify the intentions of the Parties, or to add to or modify the covenants, terms of conditions hereof or thereof. All such amendments or supplements shall be in writing and approved by the Parties.

j. Entire Agreement; Section Headings. This Agreement is the entire agreement between the Parties with respect to the subject matter thereof, and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by both Parties. The headings of the various sections of this Agreement have been inserted only for convenience, and are not part of this Agreement.

k. Counterparts. This Agreement may be executed and recorded in one or more counterparts, each of which when so executed shall be deemed an original. Such counterparts, together, shall constitute but one and the same instrument.

*[Signatures on the Following Page]*

IN WITNESS WHEREOF, Developer and LUN have caused this Agreement to be duly executed as of the day and year first above written.

**DEVELOPER:**

Cherrywood Pointe Investment LLC,  
a Minnesota limited liability company

By: United Properties LLC  
A Minnesota limited liability company  
Its Manager

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

and

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

**LUN:**

Lowry United Neighborhoods,  
a Colorado cooperative association

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





