

Approved as to form this 13 day
of Nov., 2007.



Scott E. Post, City Attorney

This document was drafted by the Community Development Authority of the City of West Allis, Wisconsin.

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 1 of Certified Survey Map 7986, recorded in the office of the Milwaukee County, Wisconsin Register of Deeds on October 29, 2007 in Volume _____ of Certified Survey Maps at Pages _____ through _____ as Document Number _____.

Said land contains _____ Acres, more or less.

EXHIBIT "B"

DEVELOPMENT SCHEDULE

<u>Common Council Actions</u>	<u>Date Required</u>
Approve Certified Survey Map: By Plan Commission By Common Council	September 26, 2007 October 2, 2007
<u>Buyer Actions</u>	<u>Date Required</u>
Construction Start: Lots 1 and 2 Lot 3 Lot 4	December 31, 2007 April 30, 2008 Not Applicable
Construction Completion (other than Lot 4) Lot 1 Lots 2 and 3	March 31, 2010 January 1, 2011

EXHIBIT "C"
ARCHITECTURAL ELEVATIONS

EXHIBIT "D"
FORM OF SUBORDINATION AGREEMENT

Document Number	Subordination Agreement
Document Number	Document Title

Recording Area

Name and Return Address

Legal Services
 Wisconsin Housing and Economic
 Development Authority
 P.O. Box 1728
 Madison, WI 53701-1728

Parcel Identification Number (PIN)

This Subordination Agreement was drafted by:

Nelson D. Flynn
 General Counsel
 Wisconsin Housing and Economic Development Authority
 201 West Washington Avenue, Suite 700
 P.O. Box 1728
 Madison, Wisconsin 53701-1728

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement") is made and entered into as the ___ day of _____, 2007, by and among (i) WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY, a Wisconsin public body corporate and politic, whose address is 201 West Washington Avenue, Suite 700, Madison, Wisconsin 53701 ("Lender"), the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, a separate body politic created by ordinance of the City of West Allis, Wisconsin pursuant to Section 66.1335 of the Wisconsin Statutes, whose address is 7525 Greenfield Avenue, West Allis, Wisconsin _____ ("CDA") and WEST ALLIS SENIOR HOUSING, LLC, a Wisconsin limited liability company whose address is c/o MSP Real Estate, Inc., 7201 Walker Street, Suite 20, St. Louis Park, Minnesota 55426 ("Borrower").

Recitals

A. The Borrower and the CDA are parties to a certain Development Agreement dated October ___, 2007 (the "Development Agreement"), pursuant to which Borrower has agreed to develop the Property described on Exhibit A attached hereto (the "Property") as a 120-unit senior independent living project.

B. The Development Agreement contains a provision whereby the CDA may reacquire the Property upon the Borrower's failure to meet certain construction deadlines set forth in the Development Agreement (the "CDA's Reacquisition Right").

C. The Lender has made or is making a loan (the "Loan") to the Borrower in the original principal amount of \$ _____. The Loan is or will be secured by a first mortgage lien (the "Mortgage") on the Property. The Borrower's obligation to repay the Loan is evidenced by a Multifamily Note dated _____, 2007 (the "Note" and is due in full on _____).

D. In connection with the Loan, Borrower will execute a Land Use Restriction Agreement ("LURA") in favor of Lender.

E. At the request of Borrower, Lender has agreed to permit the Property to remain subject to the CDA's Reacquisition Right subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lender, the CDA and Borrower agree as follows:

1. The CDA's Reacquisition Right and the terms and conditions thereof as set forth in the Development Agreement, shall at all times be subject and subordinate in each and every respect to (a) the Mortgage and to any and all increases, renewals, modifications, extensions, substitutions, replacements, and/or consolidations of the Mortgage with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Development Agreement, and (b) the LURA and to any modifications or amendments to the LURA with the same force and effect as if the LURA

had been executed, delivered and recorded prior to the execution and delivery of the Development Agreement.

2. The CDA agrees that any exercise by the CDA of the CDA's Reacquisition Right shall require the prior written consent of the Lender. If the CDA reacquires the Property pursuant to the CDA's Reacquisition Right, such Property shall remain subject to the Mortgage and the LURA and the terms and conditions thereof.

3. Borrower acknowledges and agrees that the institution of any action or other proceedings by Lender under the Mortgage in order to realize upon the Lender's interest in the Property shall not result in the cancellation or termination of the Development Agreement or the Borrower's obligations thereunder. If the Lender shall become the owner of the Property by reason of foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure or otherwise, Lender's only obligation under the Development Agreement shall be to complete or cause completion of the independent living project in accordance with the Development Agreement.

4. If the Lender or the CDA defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting party shall have the right to all available legal and equitable relief.

5. Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Lender or the CDA is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

LENDER:

Wisconsin Housing and Economic Development Authority
201 West Washington Avenue, Suite 700
P.O. Box 1728
Madison, Wisconsin 53701-1728
Attention: Legal Services

CDA:

Community Development Authority of the

City of West Allis
Department of Development
7525 West Greenfield Avenue
West Allis, Wisconsin 53214
Attention: Executive Director

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

6. This Agreement shall be binding upon the Borrower, the Lender and the CDA and shall inure to the benefit of the respective legal successors and assigns of the Lender and the CDA.

7. The Lender, the CDA and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the CDA's Reacquisition Right is subordinate to the lien, covenants and conditions of the Mortgage and the LURA, or to further evidence the intent of this Agreement.

8. This Agreement shall not be amended except by written instrument signed by all parties hereto.

9.

(i) This Agreement shall be governed by the laws of the State of Wisconsin, ("Wisconsin"), without giving effect to conflicts of laws principles.

(ii) Borrower and the CDA agree that any controversy arising under or in relation to this Agreement shall be litigated exclusively in Wisconsin. The state and federal courts and authorities with jurisdiction in Wisconsin shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Agreement. Borrower and the CDA irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which they might be entitled by virtue of domicile, habitual residence or otherwise.

10. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

11. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.


LENDER:

Wisconsin Housing and Economic Development Authority,
a Wisconsin public body corporate and politic

By: _____
Nelson D. Flynn
General Counsel

CDA:

Community Development Authority
of the City of West Allis

By:  _____
John F. Stibal,
Executive Director

BORROWER:

West Allis Senior Apartments, LLC

By: _____
Milo S. Pinkerton,
Manager

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20__, by Nelson D. Flynn, as General Counsel of the Wisconsin Housing and Economic Development Authority.

Notary Public, State of Wisconsin
My Commission expires: _____

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20__, by John F. Stibal, as Executive Director of the Community Development Authority of the City of West Allis.

Notary Public, State of _____
My Commission expires: _____

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20__, by Milo S. Pinkerton, as Manager of _____, the Manager of West Allis Senior Housing, LLC.

Notary Public, State of _____
My Commission expires: _____

Lender Loan Number: _____

	DEVELOPMENT AGREEMENT
Document Number	Title

THIS DEVELOPMENT AGREEMENT (this "Agreement"), made and entered into as of the 13 day of November, 2007, by and between the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin Statutes ("Seller"), and **HERITAGE-6, LLC**, a Wisconsin limited liability company ("Buyer"). Each of West Allis Senior Apartments, LLC, a Wisconsin limited liability company ("West Allis Senior Apartments"), Heritage-7, LLC, a Wisconsin limited liability company ("Heritage 7") and Heritage-8, LLC, a Wisconsin limited liability company ("Heritage 8") are executing this Agreement as "Guarantors" for the purpose of joining in the guaranty obligations which are contained in Section 18 hereof. The Seller and the Buyer are sometimes hereafter referred to as the "Parties".

Name and Return Address:
Community Development Authority of
the City of West Allis
Attention: Executive Director
7525 West Greenfield Avenue
West Allis, Wisconsin 53214

Part of 452-0599-001; 452-0598-001;
452-0597-003; 452-0597-002;
452-0597-001; 452-9999-007;
452-0596-000
Parcel Identification Numbers

WHEREAS, pursuant to a Purchase and Sale Agreement of even date herewith, by and among Seller, Buyer, West Allis Senior Apartments, Heritage 7, and Heritage 8, (the "Purchase and Sale Agreement"), the Seller will convey to the Buyer the real property legally described on the attached **Exhibit "A"** ("Property"); and,

WHEREAS, the Buyer intends to develop the Property by constructing at least 40-units of assisted living (the "Project") pursuant to the terms of this Agreement; and,

WHEREAS, the sale of the Property is conditioned upon the Buyer constructing the Project on the Property; and

WHEREAS, the Buyer and the Seller desire to set forth in writing the terms and conditions under which the Buyer has agreed to develop and maintain the Project;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and benefits contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **CONTINGENT ON SALE OF PROPERTY.** This Agreement and the obligations of Seller and Buyer hereunder are contingent upon the closing of the sale of the Property in accordance with the Purchase and Sale Agreement. To the extent the Property is not sold and conveyed by Seller to Buyer, this Agreement shall be void and of no force or effect. To the extent the Property is sold and conveyed by Seller to Buyer, the terms of this Agreement shall govern in the event of any inconsistency between this Agreement and the Purchase and Sale Agreement.

2. **SELLER'S OBLIGATIONS.** The Seller shall be obligated as follows:

A. **Zoning and Planning Approvals.** Seller shall use its best efforts to expedite the zoning and plan review process of the City of West Allis ("City") to accommodate Buyer's development schedule for the construction of the Project. To the extent not already approved on or prior to the date of this Agreement, all such required approvals are subject to final approval of the Common Council of the City and the City Plan Commission, as well as Seller. Assuming all such approvals are timely issued as

provided in the attached **Exhibit "B"**, the commencement date for construction shall be no later than the date referred to in the attached **Exhibit "B"** and failure of the Buyer to commence construction as set forth in **Exhibit "B"** shall constitute a breach of this Agreement.

B. Environmental Addendum. Seller shall timely complete all of the work it is responsible for under the terms of the Purchase and Sale Agreement and the Environmental Addendum which is attached to and made a part of the Purchase and Sale Agreement (the "Environmental Addendum").

3. **BUYER'S OBLIGATIONS.** Buyer shall be obligated as follows:

A. Environmental Remediation. The Buyer shall be responsible for any additional environmental remediation and geotechnical site preparation on the portion of the Property it owns beyond what Seller is responsible for under the Purchase and Sale Agreement and the Environmental Addendum.

C. Construction of Project. The Buyer will construct and landscape the portion of the Property it owns in accordance with site, landscaping, architectural, and building plans and specifications filed and approved by the City according to its review and approval procedures as herein referenced. Elevations of the proposed Project are identified on the attached **Exhibit "C"**.

D. Schedule. Subject to Section 2A, the Buyer shall commence construction of the Project to be located on the Property no later than the date referred to in **Exhibit "B"** and shall proceed with due diligence to completion and occupancy no later than the date referred to in **Exhibit "B"**.

E. **Availability of Funds.** Prior to the execution of this Agreement, and from time to time thereafter, upon the request of the Seller, the Buyer shall provide to Seller evidence satisfactory to Seller that the Buyer has available to it necessary corporation approvals and sufficient funds for the completion of the Project.

F. **Conveyance.** Buyer shall not sell, transfer or convey any of the Property to anyone other than an Affiliate until the Occupancy Permits have been issued for the Project. For purposes of this Agreement "Affiliate" shall mean an entity controlling, controlled by or in common control with Buyer, Heritage 6, Heritage 7 and/or Heritage 8. Nothing herein shall preclude Buyer from transferring member interests in Buyer.

G. **Nondiscrimination.** No owner or occupant of the Property shall restrict the use or enjoyment of the Property or the Project upon the basis of sex, race, creed, color, or national origin in the sale, use or occupancy thereof.

H. **No Subdivision.** The Parties acknowledge that in connection with the sale of the Property, the Property has been subdivided by virtue of the recordation of a certified survey map. Without the prior written consent of the Seller, Buyer may not further subdivide the Property.

4. **CONSTRUCTION QUALITY GUARANTEE.** The Buyer shall provide the following (and any material changes to the following which are likely to affect the minimum assessed value of the Property shall be subject to Seller's approval):

Two-story assisted living/Lot 2 Owner:

The assisted living portion starts with 60 lineal feet abutting W. National Ave., which will be constructed of a split-face, grey speckled block with smooth-face cream-colored banning base, a brick middle, and hardi-plank siding top. In the center of the 60

lineal feet is an 8-foot wide architecturally creative bump out, which houses a four-season enclosed porch constructed of large glass windows and has a curved roof feature. The rest of the two-story assisted living building is set back approximately 170 feet from W. National Ave., as it is the main entrance to the building and has a 26-stall parking area and water fountain in front of it. This 160-foot wide section of the building includes a pick-up/drop-off canopy in front of the entrance/lobby area. The section of building surrounding the front door will be constructed entirely of glass and brick, and the portions to the left and right of the entryway will be constructed of a split-face block base (with smooth-face block bands) and a hardi-plank siding top. A two-storied gabled section is situated on both sides of the main entrance. Again, the roof will be constructed of designer asphalt shingles.

The Plan Commission approved Buyer's plans for construction of the Project on August 22, 2007 and September 26, 2007. The Common Council approved the Special Use Permit for construction of Project on August 7, 2007, and then approved an amendment to the Special Use Permit on September 18, 2007.

5. **NO ASSIGNMENT.** The Buyer may not assign its rights in this Agreement without the prior written consent of the Seller, except that the Buyer may assign this Agreement to an Affiliate without the Seller's consent. Subject to Section 22 hereof, upon conveyance of the Property owned by Buyer, Buyer shall automatically be released from its obligations hereunder.

6. **BUILDING STANDARDS AND UTILITIES.** All buildings and other site improvements (collectively "Improvements") to be constructed under this Agreement shall comply with the following minimum standards:

A. Improvements shall be designed by an architect or engineer. No side, elevation or facade of the proposed Project buildings shall be covered from public view; consequently, all sides, elevations or facades of Project buildings shall be visually pleasing and architecturally and aesthetically compatible with the surrounding environment. Building Improvements are subject to architectural review and approval by the Plan Commission of the City as provided herein.

B. All trash disposal areas shall be screened in such a manner as to be harmonious with the building exterior and design.

C. No building Improvements or structures shall be constructed on the Property until a site plan therefore (showing location, land coverage, building intensity, landscaping and off-street parking) have been submitted to and approved by the Planning Commission of the City (the "Site Plan"). Improvements shown and determined on the Site Plan shall include, but not be limited to:

- (1)** All finished grade levels;
- (2)** Location of all building and other structures (to include a schedule showing lot area and total square feet in building (each floor));
- (3)** Sidewalks and driveways (including types of materials);
- (4)** Parking and access drive dimensions and locations, stall numbers and dimensions, curbs, loading docks, and snow storage areas;
- (5)** Loading areas (including types of materials);
- (6)** Utility and storage areas (including types of materials);
- (7)** Lawns and landscaped areas (including types of materials);
- (8)** Water impoundments;

- (9) Fences (including types of materials);**
- (10) Lights (including types);**
- (11) Areas of fill or cuts;**
- (12) Storm water drainage plans and facilities;**
- (13) On-site sewer, water and other utility locations, sizes and easement locations;**
- (14) Location, screening and type of refuse collection facilities;**
- (15) All exterior signs and all other signs visible from the exterior of the building and other structures;**
- (16) Dimensions of all front, side, and rear yards, drives, etc.;**
- (17) Other paved areas and uses, fencing and walls, outdoor lighting (location and direction of beams);**
- (18) A landscaping and screening plan showing the location, common and botanical names, planting size, root condition and quantity of all plant material; together with all ground cover and mulch areas and landscape construction materials;**
- (19) Locations and dimensions of all easements;**
- (20) Surface details of all outside areas, such as paving;**
- (21) Signs: design, size, location, and illumination;**
- (22) Designation of future expansion areas;**
- (23) Locations of all hydrants within the Property; and**
- (24) Grading Plan:**
 - (a) Existing and proposed grades and contours;**
 - (b) Surface water drainage and detention and/or retention;**

- (c) Finished grade at building;
- (d) Catch basins and storm sewer locations; and
- (e) Connection to existing utilities.

7. **PARKING.** Buyers will construct 67 surface stalls and 90 underground stall for a total of 157. Approved plans will run with the land and will remain in effect regardless of changes in ownership of the Property.

8. **REFUSE.** All trash containers, including dumpsters, must be enclosed in accordance with final plans and specifications approved by the Plan Commission. Such wall shall be of sufficient height to cover the material stored and shall be maintained so as to present a good appearance at all times. All trash enclosures to be permitted in side and rear yards only.

9. **UTILITIES AND SITE LIGHTING.** All proposed utility lines within the Property shall be installed underground in easements provided therefore. No overhead electric power, telephone or cable service will be permitted. Parking and roadway lighting (fixture, height, type and intensity) where provided shall be approved by the City. Area lighting shall not be mounted on the building. Full cut off fixtures shall be utilized to prevent light splay onto surrounding properties.

10. **LANDSCAPING.** Landscaping improvements shall be required as an integral part of the Property. All areas on the Property not used for building, storage, parking, walks, and access roads, shall be suitably graded and drained, seeded or sodded, and maintained in grass and landscaped areas as provided in Sec. 12.13 of the Revised Municipal Code. Landscaped areas, once developed, shall contain trees, shrubs, grass and/or other suitable groundcover in accordance with a landscape plan for the Property approved in writing by the Plan Commission. All required landscaping shall be completed within one year of the completion of construction of the principal building on the Property and shall, thereafter, be maintained in compliance with

applicable law. In addition, upon completion of the Project, any portion of the Property which is not improved or otherwise developed shall be landscaped in accordance with the site landscape plan approved by the City's Plan Commission on August 22, 2007. Buyer will maintain the site landscaping in accordance with the final plans approved by the Plan Commission. Approved plans will run with the land and will remain in effect regardless of changes in ownership of the Property.

11. **ARCHITECTURAL DESIGN AND URBAN FORM.** The Project should create a high-density development to fit the context and vitality of the surrounding neighborhood while utilizing innovative "new urbanism" design standards. The Project should substantially increase the tax base and enhance the neighborhood. The Project shall be constructed in accordance with the architecture, site and landscape plan approved by the City's Plan Commission on August 22, 2007 and September 26, 2007.

12. **PEDESTRIAN AND VEHICULAR ACCESS.**

A. All curb cuts and service drives shall be designed to minimize disruption of pedestrian activity and movements and subject to the approval of the Common Council Board of Public Works;

B. Pedestrian and vehicle linkages and crossing access is encouraged between existing neighborhoods and the proposed development area in an effort to promote walkability, traffic safety, and reduction of the number of new driveways on major street arterials; and,

C. Loading docks and refuse areas shall be screened and concealed from street view.

13. **PROPERTY IMPROVEMENTS.** None of the original Improvements shall be erected, placed or altered on the Property until the building plans and specifications for such improvements, including the Site Plan, and grading plan have been submitted to and approved by the Plan Commission of the City. The Plan Commission shall review and approve, approve conditionally, or disapprove the building plans and specifications with respect to their conformity with this Agreement and applicable enactments of the City, and with respect to the harmony of design and land use as it affects other property adjacent to the Property.

14. **ACCESSORY STRUCTURES.** The location, size and design compatibility of all permitted accessory structures in the Project, such as garages, maintenance buildings, etc., shall be approved in writing by the Plan Commission pursuant this Agreement, before construction. The term "accessory structure" includes, but is not limited to, the following (if such structures are to be located within the required setbacks): ground-mounted telephone and electrical transformers, gas meters, ground-mounted air conditioners, exhaust ducts and similar structures.

15. **OTHER BUILDING AND PROPERTY SPECIFICATIONS.** All other terms and conditions for the erection of buildings or structures and the use of the Property shall be governed by the ordinances of the City of West Allis.

16. **MAINTENANCE RESPONSIBILITIES.**

A. The Buyer and any subsequent owner of the Property shall keep the Property, all contiguous street right-of-way to edge of pavement, and easement areas in a well maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (1) Any Urban Art placed on the Property or buildings shall be maintained appropriately. If materials age into poor condition the Plan Commission shall have the discretion to request that they be replaced. Plan Commission approval is required prior to the installation or change to the Urban Art.
- (2) The removal of all litter, trash, refuse, and wastes.
- (3) The mowing of all lawn areas to a height of less than five (5) inches unless otherwise approved in writing by the Plan Commission. Those designated and approved unused lot areas shall be cut a minimum of three (3) times per year.
- (4) The maintenance of lawn and landscape areas in a weed-free, healthy and attractive condition.
- (5) The care and pruning of trees and shrubbery outside of easements within property boundaries.
- (6) The maintenance of exterior lighting, signs, and mechanical facilities in working order.
- (7) The keeping of all exterior building surfaces in a clean, well maintained condition.
- (8) The striping and sealing of parking and driveway areas.
- (9) The removal of unlicensed or inoperable vehicles.
- (10) Snow and ice removal.

B. During construction, it shall be the responsibility of the owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap

materials; and that construction materials, trailers, and the like are kept in a neat and orderly manner. Burning of excess or scrap construction material is prohibited. Construction site erosion control practices shall be implemented to prevent erosion, sedimentation and pollution of air or water during construction. Erosion control plan to be submitted and approved by the Building Inspection Department.

17. **CONSTRUCTION REMEDIES.** In the event that the Buyer does not commence and/or complete construction of the portion of the Project as hereinabove set forth, because of the public interest involved the Seller shall have the right to specific performance of the covenants and obligations of the Buyer to be performed hereunder by it, or Seller may reacquire the Property from the Buyer as set forth below.

A. **No Substantial Progress.** If by January 1, 2009, "substantial progress" with respect to the construction of the Project has not occurred, Seller shall have the right, subject to the rights of Buyer's first mortgage lender and tax credit investor, to reacquire the Property for a purchase price equal to the price paid by Buyer to Seller for the Property plus the fair market value of the construction completed by Buyer as of the date the Property is conveyed back to Seller. For purposes of this Agreement, substantial progress shall be deemed to have occurred if Buyer has expended \$100,000.00 on or before January 1, 2009.

B. **No Construction Completion.** If a certificate of occupancy for the Project is not issued by January 1, 2011, Seller shall have the right, subject to the rights of Buyer's first mortgage lender and tax credit investor, to reacquire the Property for a purchase price equal to the price paid by Buyer to Seller for the Property plus the fair

market value of the construction completed by Buyer as of the date the Property is conveyed back to Seller.

C. **Determination of Fair Market Value.** If the Seller and Buyer are not able to agree on the value of the construction, such amount shall be determined by appraisal. Each Party will obtain a disinterested MAI appraiser. If the Parties are thereafter unable to agree upon the value of the construction, the Parties shall agree upon a third MAI appraiser to review the two appraisals and arrive at the value of the construction. The decision of the review appraiser shall be final if it is within 25% of each of the other two appraisals. If the Parties cannot agree upon the review appraiser, a court of competent jurisdiction shall appoint said review appraiser. If the review appraiser's determination does not resolve the value of construction, either party may petition the Milwaukee County Circuit Court for such determination.

D. **Agreement to Enter into Subordination Agreements.** This Section 17 is subject to Seller agreeing to subordinate its right to reacquire the Property to each of Buyer's first mortgage lender and Buyer's tax credit investor. In the case of Buyer's first mortgage lender, Seller shall subordinate its right to reacquire the Property to said first mortgage lender's mortgage and land use restriction agreement pursuant to a subordination agreement in the form of Exhibit "D" attached hereto.

18. **GUARANTEES OF BUYER, WEST ALLIS SENIOR APARTMENTS, HERITAGE 7 AND HERITAGE 8.**

A. **Shortfall Agreement.** The Buyer and each of West Allis Senior Apartments, Heritage 7 and Heritage 8 (for purposes of this Section 18, Buyer, West Allis Senior Apartments, Heritage 7 and Heritage 8 are referred to individually as a

“Guarantor” and collectively as “Guarantors”) hereby guarantee (“Guarantee”) that the actual cumulative total of the assessed values of the Lots comprising the Property (“Cumulative Value”) shall, by the dates specified below be at least the minimum Cumulative Value listed below. If the actual Cumulative Value is less than the minimum Cumulative Value, each Guarantor that is the owner of a Lot that is assessed for an amount less than the specified minimum assessed value shall pay to the City a pro rata share of the guaranteed minimum Cumulative Value less the actual Cumulative Value multiplied by that year’s mill rate, such that the total payment by the Guarantors equals the tax payment that would have been generated by the guaranteed Cumulative Value. If a payment is due from more than one Guarantor, the payment made under this paragraph shall be allocated in proportion to the minimum assessed value for each Lot making such payment. Such amounts shall be payable as a special charge in accordance with state law and as set forth in Section 18B below. Each Guarantor’s obligation to guarantee the payment of any property tax shortfall against the guaranteed valuation for the portion of the Property it owns shall continue through the year the cumulative total of the assessed value of the Property is \$9,905,092.

SCHEDULE OF GUARANTEES

Minimum Assessed Values as of the Dates Shown

	January 1, 2008	January 1, 2009	January 1, 2010	January 1, 2011
Lot 1	\$1,000,000	\$5,000,000	\$6,000,000	\$6,180,000
Lot 2	\$225,000	\$1,100,000	\$1,981,441	\$2,041,717
Lot 3	\$225,000	\$850,000	\$1,585,154	\$1,633,375
Lot 4	<u>\$50,000</u>	<u>\$50,000</u>	<u>\$50,000</u>	<u>\$50,000</u>
Total	\$1,500,000	\$7,000,000	\$9,616,595	\$9,905,092

B. **Special Charge.** Each Guarantor agrees that any payment due from such Guarantor pursuant to the preceding paragraph may be treated as a special charge (as defined in Wis. Stat. 74.01(4)) levied against the portion of the Property owned by such Guarantor, without notice or hearing, such notice and hearing being expressly waived by each Guarantor. The special charge shall be a lien on the portion of the Property owned by such Buyer and shall be extended upon the tax roll for the year in which it is due and owing against the Property. All proceedings in relation to collection, return and sale of the portion of the Property owned by such Guarantor for delinquent real estate taxes shall apply to any such special charge.

C. **Continuing Obligation.** Each Guarantor's obligations under this Section 18 shall run with the land owned by such Guarantor and shall be binding upon such Guarantor's successors and assigns in ownership.

D. **Development Schedule.** Subject to Section 1A, Seller and Buyer and each other Guarantor shall accomplish the respective tasks assigned to it described in **Exhibit "C"** within the time deadlines set forth therein.

E. **Construction Start Guarantee.** Subject to Section 1A, Buyer and each other Guarantor guarantees with respect to construction planned for the portion of the Property it owns that all required permits will be issued and construction will begin no later than the date referred to in **Exhibit "B"**.

19. **TAX INCREMENT DISTRICT.** Pursuant to the Wisconsin Tax Increment Law, Wis. Stats. §66.1105 *et seq.* the Common Council of the City created, by resolution, Tax Incremental District Number Nine, City of West Allis Pioneer Neighborhood, as of February 28, 2006 (the "District") and approved the project plan (the "Project Plan") for the District. The

Property is within the boundaries of the District. The City created the District to foster economic redevelopment of blighted and underutilized properties. The redevelopment of property will provide the City with an enhanced neighborhood while providing increased property values that will generate property tax relief. The City has borrowed funds to pay public costs for the District with repayment generated from the project tax increment of the redevelopment. The Guarantees outlined under Section 18 protect the City's financial situations of the District.

20. **PAYMENT IN LIEU OF TAXES.** Ownership of the Property by any person, partnership, corporation, or entity, which in any manner renders any part of the Property exempt from property taxation during the life of the District jeopardizes the success of the Project Plan and shall result in a payment in lieu of taxes from the Buyer that owns such portion of the Property or, if such Property has been conveyed by such Buyer, the subsequent owner of such Property to the City each year in an amount equal to the amount of taxes that would be due and owing on such Property if it was not tax exempt and in no event less than the tax based upon an assessed value as set forth in this Agreement. Such payment shall be due, payable and collected in the same manner as property taxes.

21. **CITY A THIRD PARTY BENEFICIARY.** It is the intent of the Parties that the City, while not a party to this Agreement, receive the benefit of Sections 18, 19 and 20, *supra*, and have the right to enforce said provisions in a court of law or equity.

22. **COVENANTS RUNNING WITH THE LAND AND TERMINATION.**

A. The obligations of the Buyer hereunder are and shall be covenants that run with the land. Upon a conveyance of the Property, the Buyer shall automatically be released from its obligation hereunder and the subsequent owner of such Property shall be subject to the obligations of the original Buyer under this Agreement. It is the

intention of the Parties that subsequent owners of any portion of the Property shall also be released from their obligations hereunder upon a subsequent conveyance of the Property in accordance with the terms of this Agreement, provided, however, that any future owner of the Property shall be subject to the obligations of the original Buyer(s) hereunder.

B. This Agreement shall terminate upon dissolution by the City's Common Council of the Tax Incremental Financing District in which the Property is located.

IN WITNESS WHEREOF, the Parties have executed this Agreement the date first above written.

BUYER:

HERITAGE-6 LLC (Lot 2 Buyer)

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

JOINING AS A GUARANTOR UNDER SECTION 18:

WEST ALLIS SENIOR APARTMENTS, LLC (Lot 1 Buyer)

By: MSP West Allis, LLC, Manager

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

JOINING AS A GUARANTOR UNDER SECTION 18:

HERITAGE-7 LLC (Lot 3 Buyer)

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

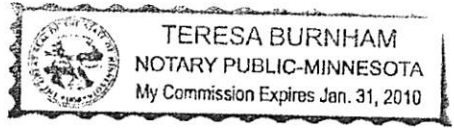
JOINING AS A GUARANTOR UNDER SECTION 18:

HERITAGE-8 LLC (Lot 4 Buyer)

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

STATE OF Minnesota)
) SS.
Hennepin COUNTY)

Personally came before me this 7th day of November, 2007, the above-named Milo S. Pinkerton, to me known to be the Manager of _____, LLC, the Manager of West Allis Senior Housing, LLC, and to me known to be the Manager of Heritage-6, LLC, Heritage-7, LLC and Heritage-8, LLC, and to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said companies.



Teresa Burnham
Print Name: Teresa Burnham
Notary Public, _____ County
State of Minnesota
My Commission: _____

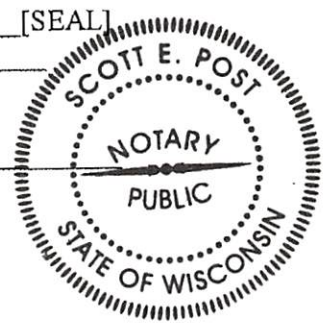
**COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS**

By: John F. Stibal
John F. Stibal, Executive Director

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this 13 day of Nov, 2007, the above-named John F. Stibal, Executive Director, of the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said authority.

Scott Post
Print Name: Scott E. Post
Notary Public, Milwaukee County
State of Wisconsin
My Commission: is Perm.



Approved as to form this 13 day
of Nov., 2007.

Scott Post
Scott E. Post, City Attorney

This document was drafted by the Community Development Authority of the City of West Allis, Wisconsin.

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 2 of Certified Survey Map 7986, recorded in the office of the Milwaukee County, Wisconsin Register of Deeds on October 29, 2007 in Volume _____ of Certified Survey Maps at Pages _____ through _____ as Document Number _____.

Said land contains _____ Acres, more or less.

EXHIBIT "B"
DEVELOPMENT SCHEDULE

<u>Common Council Actions</u>	<u>Date Required</u>
Approve Certified Survey Map:	
By Plan Commission	September 26, 2007
By Common Council	October 2, 2007
<u>Buyer Actions</u>	<u>Date Required</u>
Construction Start:	
Lots 1 and 2	December 31, 2007
Lot 3	April 30, 2008
Lot 4	Not Applicable
Construction Completion (other than Lot 4)	
Lot 1	March 31, 2010
Lots 2 and 3	January 1, 2011

EXHIBIT "C"
ARCHITECTURAL ELEVATIONS

C-1

MAD_10112113

EXHIBIT "D"
FORM OF SUBORDINATION AGREEMENT

Document Number	Subordination Agreement
Document Number	Document Title

Recording Area

Name and Return Address

Legal Services
 Wisconsin Housing and Economic
 Development Authority
 P.O. Box 1728
 Madison, WI 53701-1728

Parcel Identification Number (PIN)

This Subordination Agreement was drafted by:

Nelson D. Flynn
 General Counsel
 Wisconsin Housing and Economic Development Authority
 201 West Washington Avenue, Suite 700
 P.O. Box 1728
 Madison, Wisconsin 53701-1728

MADI_10112113

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement") is made and entered into as the ___ day of _____, 2007, by and among (i) WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY, a Wisconsin public body corporate and politic, whose address is 201 West Washington Avenue, Suite 700, Madison, Wisconsin 53701 ("Lender"), the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, a separate body politic created by ordinance of the City of West Allis, Wisconsin pursuant to Section 66.1335 of the Wisconsin Statutes, whose address is 7525 Greenfield Avenue, West Allis, Wisconsin _____ ("CDA") and HERITAGE-6, LLC, a Wisconsin limited liability company whose address is c/o MSP Real Estate, Inc., 7201 Walker Street, Suite 20, St. Louis Park, Minnesota 55426 ("Borrower").

Recitals

A. The Borrower and the CDA are parties to a certain Development Agreement dated November ___, 2007 (the "Development Agreement"), pursuant to which Borrower has agreed to develop the Property described on Exhibit A attached hereto (the "Property") as a 40-unit senior assisted living project.

B. The Development Agreement contains a provision whereby the CDA may reacquire the Property upon the Borrower's failure to meet certain construction deadlines set forth in the Development Agreement (the "CDA's Reacquisition Right").

C. The Lender has made or is making a loan (the "Loan") to the Borrower in the original principal amount of \$_____. The Loan is or will be secured by a first mortgage lien (the "Mortgage") on the Property. The Borrower's obligation to repay the Loan is evidenced by a Multifamily Note dated _____, 2007 (the "Note" and is due in full on _____).

D. In connection with the Loan, Borrower will execute a Land Use Restriction Agreement ("LURA") in favor of Lender.

E. At the request of Borrower, Lender has agreed to permit the Property to remain subject to the CDA's Reacquisition Right subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lender, the CDA and Borrower agree as follows:

1. The CDA's Reacquisition Right and the terms and conditions thereof as set forth in the Development Agreement, shall at all times be subject and subordinate in each and every respect to (a) the Mortgage and to any and all increases, renewals, modifications, extensions, substitutions, replacements, and/or consolidations of the Mortgage with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Development Agreement, and (b) the LURA and to any modifications or amendments to the LURA with the same force and effect as if the LURA

had been executed, delivered and recorded prior to the execution and delivery of the Development Agreement.

2. The CDA agrees that any exercise by the CDA of the CDA's Reacquisition Right shall require the prior written consent of the Lender. If the CDA reacquires the Property pursuant to the CDA's Reacquisition Right, such Property shall remain subject to the Mortgage and the LURA and the terms and conditions thereof.

3. Borrower acknowledges and agrees that the institution of any action or other proceedings by Lender under the Mortgage in order to realize upon the Lender's interest in the Property shall not result in the cancellation or termination of the Development Agreement or the Borrower's obligations thereunder. If the Lender shall become the owner of the Property by reason of foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure or otherwise, Lender's only obligation under the Development Agreement shall be to complete or cause completion of the independent living project in accordance with the Development Agreement.

4. If the Lender or the CDA defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting party shall have the right to all available legal and equitable relief.

5. Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Lender or the CDA is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

LENDER:

Wisconsin Housing and Economic Development Authority
201 West Washington Avenue, Suite 700
P.O. Box 1728
Madison, Wisconsin 53701-1728
Attention: Legal Services

CDA:

Community Development Authority of the

City of West Allis
Department of Development
7525 West Greenfield Avenue
West Allis, Wisconsin 53214
Attention: Executive Director

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

6. This Agreement shall be binding upon the Borrower, the Lender and the CDA and shall inure to the benefit of the respective legal successors and assigns of the Lender and the CDA.

7. The Lender, the CDA and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the CDA's Reacquisition Right is subordinate to the lien, covenants and conditions of the Mortgage and the LURA, or to further evidence the intent of this Agreement.

8. This Agreement shall not be amended except by written instrument signed by all parties hereto.

9.

(i) This Agreement shall be governed by the laws of the State of Wisconsin, ("Wisconsin"), without giving effect to conflicts of laws principles.

(ii) Borrower and the CDA agree that any controversy arising under or in relation to this Agreement shall be litigated exclusively in Wisconsin. The state and federal courts and authorities with jurisdiction in Wisconsin shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Agreement. Borrower and the CDA irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which they might be entitled by virtue of domicile, habitual residence or otherwise.

10. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

11. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

LENDER:

Wisconsin Housing and Economic Development Authority,
a Wisconsin public body corporate and politic

By: _____
Nelson D. Flynn
General Counsel

CDA:

Community Development Authority
of the City of West Allis

By: _____
John F. Stibal,
Executive Director

BORROWER:

Heritage-6, LLC

By: _____
Milo S. Pinkerton,
Manager

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____, by Nelson D. Ynn, as General Counsel of the Wisconsin Housing and Economic Development Authority.

Notary Public, State of Wisconsin
My Commission expires: _____

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____, by John F. [Name], as Executive Director of the Community Development Authority of the City of West [City].

Notary Public, State of _____
My Commission expires: _____

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____, by Milo S. [Name], as Manager of _____, the Manager of Heritage-6, LLC.

Notary Public, State of _____
My Commission expires: _____

Loan Number: _____

MEMORANDUM OF AGREEMENT

Document Number

Title

THIS MEMORANDUM OF AGREEMENT (this “Agreement”), made and entered into as of the 13 day of November, 2007, by and between the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin Statutes (“Seller”), and **HERITAGE-8, LLC**, a Wisconsin limited liability company (“Buyer”).

WHEREAS, pursuant to a Purchase and Sale Agreement of even date herewith, by and among Seller, Buyer, West Allis Senior Apartments, LLC, Heritage-6, LLC and Heritage-7, LLC, the Seller has conveyed to Buyer, the real property legally described in the attached Exhibit “A” (the “Property”); and

WHEREAS, the sale of the Property is conditioned upon the Buyer maintaining the Property in accordance with the site landscaping plan approved by the Plan Commission of the City of West Allis, Wisconsin and Buyer’s agreement that any future development of the Property will be subject to Seller’s approval.

NOW THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

Name and Return Address:
Community Development Authority of
the City of West Allis
Attention: Executive Director
7525 West Greenfield Avenue
West Allis, Wisconsin 53214

Part of 452-0599-001; 452-0598-001;
452-0597-003; 452-0597-002;
452-0597-001; 452-9999-007;
452-0596-000

Parcel Identification Numbers

1. Site Landscaping Plan. Buyer shall maintain and landscape the Property in accordance with the site landscaping plan approved by the Plan Commission of the City of West Allis, Wisconsin on August 22, 2007.

2. Future Development. Any future development of the Property shall be subject to Seller's written approval, which shall not be unreasonably withheld, conditioned or delayed.

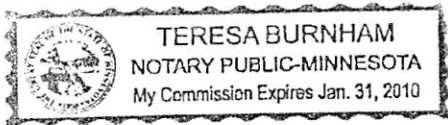
Dated: November 7, 2007

HERITAGE-8 LLC

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

STATE OF Minnesota)
Hennepin) SS.
COUNTY)

Personally came before me this 7th day of November, 2007, the above-named Milo S. Pinkerton, to me known to be the Manager of Heritage-8, LLC, and to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said company.



Teresa Burnham
Print Name: Teresa Burnham
Notary Public, _____ County
State of Minnesota
My Commission: _____

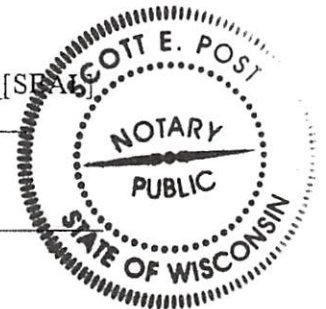
**COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS**

By: John F. Stibal
John F. Stibal, Executive Director

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this 13 day of Nov., 2007, the above-named John F. Stibal, Executive Director, of the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said authority.

Scott E. Post [SEAL]
Print Name: Scott E. Post
Notary Public, Milwaukee County
State of Wisconsin
My Commission: is Perm.



Approved as to form this 13 day

of Nov., 2007.



Scott E. Post, City Attorney

This document was drafted by the Community Development Authority of the City of West Allis, Wisconsin.

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 4 of Certified Survey Map 7986, recorded in the office of the Milwaukee County, Wisconsin Register of Deeds on October 29, 2007 in Volume _____ of Certified Survey Maps at Pages _____ through _____ as Document Number _____.

Said land contains _____ Acres, more or less.