

DRAFT

CONSTRUCTION SERVICES AGREEMENT

between

Clover Communities Lorain LLC,
as the Construction Services Provider and Lessee

-and-

Lorain Port Authority,
as the Lessor

Dated

as of

[_____, 2016]

FROST BROWN TODD LLC
Legal Counsel

CONSTRUCTION SERVICES AGREEMENT

THIS CONSTRUCTION SERVICES AGREEMENT dated as of _____, 2016, is made by and among the Lorain Port Authority, a port authority and a body corporate and politic organized and existing under the laws of the State of Ohio (the "State"), as owner of the Project hereinafter defined (the "Authority"), Clover Communities Lorain LLC, an Ohio limited liability company, as an independent contractor to provide construction services to the Authority for the acquisition, construction, equipping and installation of the Project hereinafter defined (together with any successors and its permitted assigns, the "Construction Services Provider") under the following circumstances, with each capitalized word or term used as a defined term but not otherwise defined in this Agreement having the meaning assigned to it in accordance with Section 1.

RECITALS

A. The Authority is authorized and empowered by the laws of the State including, without limitation, Section 13 of Article VIII, Ohio Constitution and the Act, among other things to acquire, construct, equip and install port authority facilities as defined in the Act and to lease those facilities and provide for their use to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State;

B. The Lessee has determined to locate at the Project Site that business of the Lessee to be conducted by use of the Project, and the Authority has determined, based in part upon representations made by the Lessee, that the business to be conducted by the Lessee at the Project will create jobs and employment opportunities at the Project Site, including without limitation, jobs and employment opportunities for residents of the State and the Authority;

WHEREAS, in order to further the Lessee's business interests and to promote the creation and preservation of jobs and employment opportunities for residents of the State and the Authority and to enhance the economic welfare of the people of the State, the Lessee has agreed to perform the duties and obligations of the Construction Services Provider under this Agreement, acting as an independent contractor to provide construction services to the Authority for such purpose;

NOW THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements herein made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Construction Services Provider hereby agree as follows (provided that any obligation of the Authority created by or arising out of this Agreement shall never constitute a general debt of the Authority or give rise to any pecuniary liability of the Authority.

Section 1. Use of Defined Terms; Interpretation. Each capitalized word or term used as a defined term but not otherwise defined in this Agreement shall have the meaning assigned to it in the Lease dated as of the same date as this Agreement (the "Lease"), between the Authority, as lessor, and the Construction Services Provider, as lessee (the "Lessee"), a copy of which is on file in the office of the Authority, and a memorandum of which has been recorded on the Closing Date in the Lorain County, Ohio Official Records as Instrument No. _____, unless the context or

use indicates another or different meaning or intent. Those definitions shall be equally applicable to both the singular and plural forms of any of the words and terms used in this Agreement.

Any reference to the Authority, to the Legislative Authority or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; *provided that*, no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way a limitation, restriction or impairment of the rights or obligations of the Authority or the Construction Services Provider under this Agreement or any other Operative Document.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof", "hereby", "herein", "hereto", "hereunder" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Reference to a numbered or lettered Article, Exhibit, Section or subsection means that Article, Exhibit, Section or subsection of or to this Agreement, unless the context indicates a different meaning or intent.

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

Section 2. Appointment of Construction Services Provider. The Authority hereby appoints the Construction Services Provider to act as the Authority's exclusive construction services provider, and the Construction Services Provider agrees to act as the Authority's construction services provider, for the acquisition, construction, equipping and installation of the Project Facilities, including the negotiation, management and supervision of any construction contracts therefor, subject to the approval and execution of those contracts by the Authority in accordance with this Agreement. The Construction Services Provider further agrees that, subject to Construction Services Provider's interest therein and occupancy, possession and use thereof as Lessee under the Lease, the Authority is the Ground Lessee of the Project Site and the owner of the Project Facilities; title to the various components of the Project Facilities, as acquired, constructed, equipped and installed, will vest in the Authority, and the Construction Services Provider will take such actions as may be required, if any, in order to fully vest, and to evidence the full vesting of, that title in the Authority and to protect the Authority's interests in the Project Facilities; and the Authority is and shall be the owner of the Project Facilities. The Authority agrees that it will accept title to the Project Facilities, subject only to conditions as to proper completion of the acquisition, construction and installation of the Project Facilities set forth herein and in the Lease.

Section 3. Construction Contracts. It is understood and agreed that any contract for the acquisition, construction, equipping and installation of the Project shall provide that the Authority does not have any obligation to pay any costs under such contract, and each such contract shall so state. Any such contract entered into by the Construction Services Provider prior to the execution and delivery of this Agreement shall be assigned to the Authority; *provided that*, prior to the Authority's acceptance of any such assignment, that contract shall be in form and substance approved by the Authority in its sole discretion. Construction Services Provider shall hold the Authority harmless and indemnify the Authority for any claims, liability, losses or expenses arising out of any failure to so provide such terms in any contract.

Section 4. Construction Management; Certain Requirements. (a) The Authority hereby expressly authorizes the Construction Services Provider, or any agent or contractor of the Construction Services Provider, and the Construction Services Provider unconditionally agrees, for the benefit of the Authority and as an independent contractor to provide construction services to the Authority hereunder, to take all action necessary or desirable (1) for the acquisition, construction, equipping, installation and testing of the Project Facilities pursuant to and in accordance with the Plans and Specifications, and (2) for the performance and satisfaction of any and all of the Authority's obligations under any construction contract for the Project Facilities and to fulfill all of the obligations of the Construction Services Provider hereunder, including, without limitation:

(i) all design and supervisory functions relating to the acquisition, construction, installation, and testing of the Project Facilities, including without limitation, performance of or contracting for all architectural and engineering work related thereto;

(ii) negotiation, execution and performance of the Authority's obligations under all contracts and arrangements to acquire, construct, install and test the Project Facilities (including, without limitation, the removal of all waste and rubbish and the enforcement of all construction warranties) on such terms and conditions as are customary and reasonable in light of local and national standards and practices;

(iii) negotiation, execution and performance of the Authority's obligations under all contracts and arrangements to procure all labor, materials and equipment necessary for the acquisition, construction, equipping, installation and testing of the Project Facilities;

(iv) obtaining all necessary permits, licenses, consents, approvals, entitlements and other authorizations required under applicable laws (including without limitation applicable environmental laws), from all governmental authorities in connection with the acquisition, construction, equipping installation and testing of the Project Facilities, all in accordance with the Plans and Specifications, or otherwise required for the use and occupancy of the Project by the Authority or the Lessee;

(v) payment of any and all real property taxes, special taxes or assessments unless and except to the extent paid by the Lessee pursuant to the Lease,

and all property taxes on tangible personal property included in the Project Facilities or related improvements located on the Project Site;

(vi) payment of all charges for water, heat, gas, electricity, sewer and any and all other utilities, as well as any other expense, cost, charge or other fees with respect to the Project, or the operation, management, repair, rebuilding, use or occupancy thereof, or of any portion thereof;

(vii) maintaining all books and records with respect to the acquisition, construction, equipping, installation and testing of the Project Facilities; and

(viii) payment of all costs and expenses and performance of all other acts necessary in connection with the acquisition, construction, equipping, installation and testing of the Project Facilities in accordance with the Plans and Specifications and applicable law.

(b) Subject to the terms and conditions of this Agreement and the other Operative Documents, the Construction Services Provider shall have sole management and control over the acquisition, construction, equipping, installation and testing of the Project Facilities, including the means, methods, sequences and procedures for their acquisition, construction, equipping, installation and testing.

(c) The Construction Services Provider agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, veteran status, or ancestry in violation of applicable law, and to ensure that applicants for employment are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, veteran status, or ancestry as required by applicable law, and to incorporate the requirements of this paragraph in all of the respective contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials), and to require all contractors for any part of the work involved in the acquisition, construction, equipping or installation of the Project Facilities to incorporate such requirements in all subcontracts for such work.

(d) A Notice of Commencement in proper form as provided in Section 1311.252 of the Ohio Revised Code shall be prepared and filed by the Construction Services Provider on behalf of the Authority. The Construction Services Provider shall permit the Authority to review the Notice of Commencement prior to its filing.

(e) The final Plans and Specifications approved by the Lessee shall be placed on file with the Construction Services Provider and the Authority and may be changed from time to time by the Construction Services Provider as the Lessee determines to be necessary or desirable to enable the Lessee to occupy and use the Project Facilities for the Project Purposes; *provided that*, (i) the Lessee shall provide prior written notice to the Authority of any such change involving an expenditure of more than \$200,000 for an individual expenditure or \$500,000 in the aggregate, (ii) any such change shall not materially diminish the fair market value of the Project from that which it would be if the Project Facilities were completed in accordance with the existing Plans and Specifications, (iii) any such change shall not change the use to be made of the Project from the

Project Purposes or cause the Project to be used in a manner not permitted under the Act, and (iv) the Lessee shall be responsible for any additional costs incurred as a result of any such change.

(f) No later than the 10th Business Day of each September, December, March, and June during the construction period for the Project, the Construction Services Provider shall prepare, sign and submit a Construction Progress Certificate (each, a "Construction Progress Certificate"), to the Authority setting forth, in reasonable detail, (a) the then current status of the acquisition, construction, equipping and installation of the Project Facilities, (b) the total amounts remaining in the Cost Budget on file with the Authority and (c) that to the best of the Construction Services Provider's knowledge, no Event of Default or event that, with the giving of notice or the lapse of time, or both, would constitute an Event of Default, has occurred and is continuing under any Operative Document.

Section 5. Payment of Project Costs; Project Completion.

(a) [Description of Construction Financing]

(b) The Project shall be deemed completed when a final certificate of occupancy or a temporary certificate of occupancy has been issued with respect to the Project Facilities, whereupon the Construction Services Provider shall certify to the Authority:

(i) the total costs of acquiring, constructing, equipping and installing the Project Facilities;

(ii) that all other facilities necessary for the proper functioning of the Project Facilities have been acquired, constructed, installed, equipped and otherwise improved and developed, including all punch-list items;

(iii) that the acquisition, construction, equipping and installation of the Project Facilities have been completed in accordance with the Plans and Specifications in all material respects, and that all costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with the Project Facilities have been paid or discharged;

(iv) that all other facilities necessary for the proper functioning of the Project Facilities have been provided and all costs and expenses incurred in connection with such facilities have been paid or discharged, including all associated retainages;

(v) that the acquisition, construction, equipping and installation of the Project Facilities, and any other facilities described in clause (ii), have been accomplished in a manner that conforms to all applicable zoning, planning, building, environmental and other regulations of each governmental authority having jurisdiction over the Project Facilities;

(vi) that all licenses and approvals for the use and operation of the Project Facilities then required by any governmental authority have been obtained;

(vii) that the Construction Services Provider has received a certificate of occupancy or a temporary certificate of occupancy permitting the use of the Project Facilities for their intended purposes; and

~~(viii) that the acquisition, construction, equipping and installation of the Project Facilities have been accomplished in a manner that permits the Authority and the Lessee to use and operate the Project Facilities for the Project Purposes.~~

The Construction Services Provider shall also provide a certificate to the Authority (the "Completion Certificate") in the form attached hereto as Exhibit C, which Completion Certificate shall specify (i) the date by which the events described in clauses (ii), (iii) and (iv) above have been completed, (ii) which costs and expenses, if any, are not yet due, or are being contested, and (iii) what amounts should be retained for any other reasons. Notwithstanding the foregoing, the Completion Certificate shall state that it is given without prejudice to any rights against third parties that then exist or that may come into being subsequently.

The Construction Services Provider shall also deliver a Final Cost Certification, which shall mean a certification of the Construction Services Provider setting forth in reasonable detail the costs incurred and, if appropriate, to be incurred by the Construction Services Provider in completing the Project and completed AIA Forms to the Authority.

(f) The Construction Services Provider warrants to the Authority that all materials constituting part of the Project Facilities shall be of good quality, and all work shall be of good and workmanlike quality, in conformity to the requirements of the Plans and Specifications in all material respects and as set forth in this Agreement and free from material defects in materials and workmanship (without regard to the standard of care exercised in its performance), for a period of at least one year after delivery of the certificate of completion for the Project Facilities. The Construction Services Provider shall, at its sole cost and expense, (i) promptly correct or cause to be corrected, all work that is not in material conformity with the Plans and Specifications and this Agreement, (ii) correct, or cause to be corrected, any defects in materials and workmanship of the work (without regard to the standard of care exercised in its performance) that appear within a period of one year after delivery of the completion certificate for the Project Facilities and (iii) replace, repair or restore, or cause replacement, repairs or restoration of, any parts of the work or any of the fixtures, equipment or other items placed therein that are damaged as a consequence of corrective action taken pursuant hereto. The Construction Services Provider shall remove from the Project Site all portions of the work that are defective or nonconforming and that have not been corrected under this subsection, unless removal is waived by Authority in writing. Any such removal of portions of the work shall be accomplished in a manner that complies with all applicable environmental laws.

(g) Certain Warranties and Representations. The Construction Services Provider warrants and represents to the Authority as follows:

(i) Organization and Power. The Construction Services Provider (a) is an Ohio limited liability company, duly organized, validly existing and in possession of full power and authority to undertake its obligations hereunder; and (b) has all

power, authority and legal right to carry on its business as now conducted, to execute, deliver and perform its obligations under this Agreement.

(ii) Construction Services Provider required to pay Project Costs. The ~~Construction Services Provider shall complete the Project Facilities in accordance with the Plans and Specifications and shall pay all such costs of the Project Facilities from its own funds.~~ The Construction Services Provider shall not be entitled to any reimbursement for any such additional costs of the Project Facilities from the Authority.

Section 6. Events of Default; Remedies. An "Event of Default" hereunder shall mean:

(a) any default by the Construction Services Provider in the performance of its obligations under subsection 4(c) or (d);

(b) the occurrence of an Event of Default under any other Operative Document;

(c) any representation, warranty or statement made by the Construction Services Provider herein or in any statement or certificate delivered or required to be delivered pursuant hereto shall be false or misleading in any material respect on the date as of which made or deemed made; and

(d) any default by the Construction Services Provider in the performance or observance of any covenant or agreement contained herein other than its covenants and agreements contained in subsection 4(c), which default shall continue for 60 days or more after the earlier to occur of actual knowledge of such default by the Construction Services Provider, or notice to the Construction Services Provider from the Authority.

In the event of the occurrence of an Event of Default, the Authority may terminate this Agreement, and pursue such claims as it may have at law or in equity as a consequence of the Construction Services Provider's breach.

Section 7. Special Limited Obligations. All covenants, stipulations, obligations and agreements of the Authority contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, stipulation, obligation or agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Authority or its Legislative Authority in other than his official capacity. Neither the members of the Legislative Authority nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof. Any obligation of the Authority created by or rising out of this Agreement shall never constitute a general obligation, debt or bonded indebtedness, or a pledge of the general credit, of the Authority or give rise to any pecuniary liability of the Authority.

IN WITNESS WHEREOF, the Authority and Construction Services Provider have caused this Construction Services Agreement to be executed and delivered by their respective duly authorized representatives.

Lorain Port Authority

By: _____

Name: _____

Title: _____

Clover Communities Lorain LLC, an Ohio
limited liability company, as Construction
Services Provider

By: _____

Name: _____

Title: _____

OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer of the Lorain Port Authority, the Authority under the foregoing Construction Services Agreement, hereby certifies that the moneys required to meet the obligations of the Authority under that Agreement have been lawfully appropriated by the Board of Directors of the Authority for such purpose and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. The obligations of the Authority under the Construction Services Agreement are limited as provided in Section 7 thereof. This Certificate is given in compliance with Section 5705.41, Ohio Revised Code.

Fiscal Officer
Lorain Port Authority

Dated: _____, 2016

PROJECT SITE

PROJECT FACILITIES

The Project Facilities consist of a three-story building with 125 independent senior living units located in Lorain County, Ohio.

CERTIFICATE OF COMPLETION

The undersigned, the duly authorized representative of Clover Communities Lorain LLC certifies the following to the Authority:

- i. All facilities necessary for the proper functioning of the Project Facilities have been acquired, constructed, installed, equipped and otherwise improved and developed, including all punch-list items, as of _____, _____.
- ii. As of _____, _____, the acquisition, construction, equipping and installation of the Project Facilities have been completed in accordance with the Plans and Specifications in all material respects, and that all costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with the Project Facilities have been paid or discharged;
- iii. As of _____, _____, all other facilities necessary for the proper functioning of the Project Facilities have been provided and all costs and expenses incurred in connection with such facilities have been paid or discharged, including all associated retainages. If there are any costs and expenses which are not yet due or are being contested, or if any amounts must be retained for any other reason, said amounts should be described and attached to this certificate.
- iv. An accurate description of the costs incurred and, if appropriate, to be incurred by the Construction Services Provider in completing the Project and completed AIA Forms to the Authority is attached to this certificate.

Terms not otherwise defined herein shall have the meanings prescribed to them in the Construction Services Agreement between Clover Communities Lorain LLC and the Lorain Port Authority, dated as of [_____] __, 2016.

Clover Communities Lorain LLC, an Ohio limited liability company, as Construction Services Provider

By: _____
Name: _____
Title: _____