

TOWNSHIP OF PENNSAUKEN, NEW JERSEY

RESOLUTION 2022-356

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED PILOT AGREEMENT WITH PENNSAUKEN TOWERS PRESERVATION PARTNERS, LLC, TO PROVIDE AFFORDABLE HOUSING TO LOW INCOME SENIORS IN CONNECTION WITH THE PENNSAUKEN TOWERS SENIOR HOUSING PROJECT

WHEREAS, the Township of Pennsauken ("Township" or "Municipality") is committed to the preservation of affordable housing as a necessary and valuable resource for its citizen; and

WHEREAS, Pennsauken Senior Towers, an 8-story, 101 one-bedroom apartment unit senior affordable housing facility ("Pennsauken Towers" or the "Project"), located on certain real property designated as Lot 2 Block 4301 as shown on the official Tax Map of the Township; and

WHEREAS, the Project was developed and opened in 1981 to assist low-income seniors to obtain safe decent and affordable housing pursuant to the United States Department of Housing and Urban Development ("HUD") Section 8 project based subsidy program; and

WHEREAS, over the past 41 years, Pennsauken Towers has provided a source of safe, decent and well-maintained affordable housing for the senior citizens of; and

WHEREAS, the senior citizen residents of Pennsauken Towers currently pay an average rent, which based on 30 % of their total income, is less than 50% of that charged in the open market; and

WHEREAS, the existing HUD Section 8 contract with HUD ("Section 8 Contract") for Pennsauken Towers will expire in the year 2031: and

WHEREAS, the Township has received low-income housing development credits from the Council on Affordable Housing for Pennsauken Towers, which may be extended if and to the Project is re-capitalized under Section 42 of the Low-Income Housing Tax Credit Program and continued as affordable housing; and

WHEREAS, the present owner of the Project, Pennsauken Senior Towers Urban Renewal, LLC ("PTUR"), and its designated successor, Pennsauken Towers Preservation Partners, LLC ("PTPP" or "Sponsor"), have agreed to renovate apartments, upgrade systems and preserve the complex as an affordable housing resource for seniors and, for such purpose,

will obtain project financing through the New Jersey Housing and Mortgage Finance Agency ("NJHMFA Financing"); and

WHEREAS, prior to the completion of the NJHMFA Financing, the Sponsor will continue to provide affordable housing in accordance with the Section 8 Contract and the requirements and restrictions imposed thereby and by HUD; and

WHEREAS, subsequent to the NJHMFA Financing, the Sponsor will continue to provide affordable housing in accordance with the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended (N.J.S.A. 55:14K-1 et seq.), the rules promulgated thereunder at N.J.A.C. 5:80-1 et seq., and all applicable guidelines (the foregoing hereinafter referred to as the "HMFA Requirements") and the Section 8 Contract; and

WHEREAS, upon the closing of the NJHMFA Financing, the Project will become subject to certain NJHMFA Requirements pursuant to a mortgage provided by the Sponsor in favor of the New Jersey Mortgage Finance Agency ("Agency") and certain documents executed between the Sponsor and the Agency; and

WHEREAS, the governing body of the Township hereby determines that there is a continuing need for the Project in the Township, and.

WHEREAS, the Sponsor has presented to the Township Committee a revenue projection for the Project which sets forth the anticipated revenue to be received by the Sponsor from the operation of the Project as estimated by the Sponsor and the Agency, a copy of which is attached hereto and made a part hereof as Exhibit "A".

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Pennsauken ("Committee") that:

1. The Committee does hereby adopt the within Resolution and makes the determination and findings herein contained by virtue of, pursuant to, and in conformity with the provisions of the NJHMFA Requirements with the intent and purpose that the Agency shall rely thereon in making or facilitating a mortgage loan to the Sponsor, which shall own and operate the Project; and

2. The Committee does hereby adopt the within Resolution with the further intent and purpose that from the date of execution of the Agency mortgage, the Project, including both the land and improvements thereon, will continue to be exempt from real property taxation as provided in the NJHMFA Requirements, provided that payments in lieu of taxes for municipal services supplied to the Project and made to the municipality in such amounts and manner as set forth in the Amended and Restated Agreement for Payments in Lieu of Taxes to be executed and delivered when the Project is subject to the Agency mortgage; and

3. The Committee hereby authorizes and directs the Mayor of the Township of Pennsauken to execute, on behalf of the municipality, the Amended and Restated Agreement for Payments in Lieu of Taxes in similarity to the form annexed hereto as Exhibit "B" ("New

Agreement"); and

4. That the execution of the New Agreement is conditioned upon the Sponsor obtaining Tax Credit Approval and financing from the Agency, and upon the Sponsor obtaining all necessary municipal approvals; and

5. The Committee understands and agrees that the revenue projections set forth in Exhibit" A" are estimates and that the actual payments in lieu of taxes to be paid by the Sponsor to the municipality shall be determined pursuant to the New Agreement executed between the Sponsor and municipality.

6. The Committee hereby consents to the PILOT Resolution and the New Agreement to be entered into with the Sponsor.

7. The adoption of this resolution shall supersede and shall repeal in its entirety Resolution No. 2022:325 adopted on August 4, 2022.

CERTIFICATION

I, Pamela Scott-Forman, hereby certify that I, the undersigned, am the Municipal Clerk of the Township of Pennsauken, and am duly authorized to certify resolutions adopted by the Township Committee at a regular meeting held on the 1st day of September 2022.

Pamela Scott-Forman
Municipal Clerk

EXHIBIT "A"

Pennsauken Towers Calculation of PILOT Payment

Total Rental Income	\$1,391,072
LESS:	
Vacancy, Losses & Concessions	<u>(\$22,181)</u>
Net Rental Income	\$1,368,891
ADD:	
Other Income	<u>\$48,889</u>
Total Project Income	\$1,417,780
	4.111%
PILOT @ 4.11 % of Total Income Until 3/31/31	\$58,285

Note 1: A supplemental **one-time PILOT payment of \$182,993** will be made when Bonds are issued for Project

Note 2: The Payment in Lieu of Taxes percentage will increase to **6.28%** as of **4/1/2031**

EXHIBIT "B"

AMENDED AND RESTATED AGREEMENT FOR PAYMENT IN LIEU OF TAXES

Pennsauken Towers, HMFA #(s) TBD

THIS AMENDED AND RESTATED AGREEMENT FOR PAYMENT IN LIEU OF TAXES amends and restates in its entirety that certain "Real Estate Tax Exemption Agreement" entered into on September 10, 1979, as such agreement has been amended and supplemented to date, and is made this _____ day of _____ 2022, between **PENNSAUKEN TOWERS PRESERVATION PARTNERS, LLC**, a limited liability company, of the State of New Jersey, having its principal office at 587 Haddon Avenue, Collingswood, New Jersey 08108 (hereinafter, the "Sponsor") and the **TOWNSHIP OF PENNSAUKEN**, a municipal corporation in the County of Camden and State of New Jersey (hereinafter, the "Municipality").

WITNESSETH

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

1. This Agreement is made pursuant to the authority contained in Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (N.J.S.A. 55:14K-1 et seq.) (hereinafter "HMFA Law") and a Resolution of the Township Committee of Pennsauken adopted on August 4, 2022 (the "Resolution"), and with the approval of the New Jersey Housing and Mortgage Finance Agency (hereinafter the "Agency"), as required by N.J.S.A. 55:14K-37.

2. The Project is a senior affordable housing development situated on that parcel of land designated as Block 4301, Lot 2 as shown on the Official Assessment Map of the Township of Pennsauken in the State of New Jersey, and more commonly referred to as "Pennsauken Towers". The Project will remain a senior affordable housing development for the entire term of this Agreement.

3. Upon the date (such date referred to as the "Commencement Date") the Project is subject to a permanent mortgage provided by the Sponsor in favor of the Agency (referred to herein as the "Agency Mortgage"), the Project shall continue to be exempt from real property taxes, provided that the Sponsor shall make payments in lieu of taxes to the Municipality as provided hereinafter. The exemption of the Project from real property taxation and the Sponsor's obligation to make payments in lieu of taxes shall not extend beyond the date on which the Agency Mortgage is paid in full, which according to the HMFA Law, may not exceed fifty (50) years

4. From and after the Commencement Date, and for the period through and including March 31, 2031, the Sponsor shall make payments in lieu of taxes to the Township in an amount equal to 4.11% of Project Revenues. As used herein, "Project Revenues" means the total annual gross rental or carrying charge or other income of the Sponsor from operating the Project, less common area utility cost and vacancies, if any. Project Revenues specifically does not include any grants, loans, equity contributions or other funds contributed to the project for any purpose related to the acquisition, construction, rehabilitation or the establishment of any required reserves for the Project.

5. From and after April 1, 2031, Sponsor shall increase its payment in lieu of taxes payment to 6.28% percent of Project Revenues and shall continue to make such payment for the remainder of the term of the Agency Mortgage.

6. The amount of payment in lieu of taxes to be paid pursuant this Agreement is calculated in Exhibit "A" attached hereto. It is expressly understood and agreed that the revenue projections provided to the Municipality as set forth in Exhibit "A" and as part of the Sponsor's application for an agreement for payments in lieu of taxes are estimates only. The actual payments in lieu of taxes to be paid by the Sponsor shall be determined pursuant to Paragraphs 4, 5 and 6 above and pursuant to Paragraph 9 below.

7. The Sponsor agrees to maintain the Project as a senior affordable housing development for the entire term of the Agreement. If the Project ceases to be a senior affordable housing development, this Agreement is void and the Property reverts to being taxed according to the Township's annual tax assessment as of the date it ceased being a senior housing development.

8. (a) All payments by the Sponsor shall be made on a quarterly basis in accordance with bills issued by the Tax Collector of the Municipality in the same manner and on the same dates as real estate taxes are paid to the Municipality and shall be based upon Project Revenues of the previous year. No later than three (3) months following the end of the first fiscal year of operation after and each year thereafter that this Agreement remains in effect, the Sponsor shall submit to the Municipality a certified, audited financial statement of the operation of the Project (the "Audit"), setting forth the Project Revenues and the total payments in lieu of taxes due to the Municipality calculated as per Paragraphs 4 and 5 above. The Sponsor simultaneously shall pay the difference, if any, between (i) the Audit Amount and (ii) payments made by the Sponsor to the Municipality for the preceding fiscal year. The Municipality may accept any such payment without prejudice to its right to challenge the amount due. In the event that the payments made by the Sponsor for any fiscal year shall exceed the Audit Amount for such fiscal year, the Municipality shall credit the amount of such excess to the account of the sponsor.

(b) All payments pursuant to this Agreement shall be in lieu of taxes and the Municipality shall have all the rights and remedies of tax enforcement granted to Municipalities by law just as if said payments constituted regular tax obligations on real property within the Municipality. If, however, the Municipality disputes the total amount of the annual payment in lieu of taxes due it, based upon the Audit, it may apply to the Superior Court, Chancery Division for an accounting of the service charge due the Municipality, in accordance with this Agreement and NJHMFA Law. Any such action must be commenced within one year of the receipt of the Audit by the Municipality.

(c) In the event of any delinquency in the aforesaid payments, the Municipality shall give notice to the Sponsor and NJHMFA in the manner set forth in 10(a) below, prior to any legal action being taken.

9. In addition to the provisions set forth in Paragraph 8 above, the tax exemption provided herein shall apply only so long as the Sponsor or its successors and assigns and the Project remain subject to the provisions of the NJHMFA Law and Regulations made thereunder and the supervision of the Agency, but in no event longer than the term of the Agency Mortgage. In the event of (a) a sale, transfer or conveyance of the Project by the Sponsor or (b) a change in the organizational structure of the Sponsor, this Agreement shall be assigned to the Sponsor's successor and shall continue in full force and effect so long as (i) the successor entity qualifies under the HMFA Law or any other state law applicable at the time of the assignment of this Agreement and assumes the Agency Mortgage, and (ii) prior written notice is provided by the Sponsor to the Municipality of (A) such sale, transfer or conveyance of the Project, or (B) a change in the organizational structure of the Sponsor. The Municipality shall, thereafter, have the right to approve or disapprove such a sale, transfer or conveyance, or change of organizational structure, in its discretion, which will not be unreasonably delayed, conditioned or withheld.

10. Upon any termination of such tax exemption, whether by affirmative action of the Sponsor, its successors and assigns, or by virtue of the provisions of the NJHMFA Law, or any other applicable state law, the Project shall be taxed as omitted property in accordance with the law.

11. The Sponsor, its successors and assigns shall, upon request, permit inspection of property, equipment, buildings and other facilities of the Project and also documents and papers by representatives duly authorized by the Municipality. Any such inspection, examination or audit shall be made during reasonable hours of the business day, in the presence of an officer or agent of the Sponsor or its successors and assigns.

12. Any notice or communication sent by either party to the other hereunder shall be sent by certified mail, return receipt requested, addressed as follows:

(a) When sent by the Municipality to the Sponsor, it shall be addressed to

Pennsauken Towers Preservation Partners, LLC, Owner, Pennsauken Tower, 8001 Maple Avenue, Pennsauken, NJ 08109 or to such other address as the Sponsor may hereafter designate in writing and a copy of said notice or communication by the Municipality to the Sponsor shall be sent by the Municipality to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085, with an additional copy sent to PRD Management Inc, 587 Haddon Avenue, Collingswood, NJ 08108.

(b) When sent by the Sponsor to the Municipality, it shall be addressed to the Township of Pennsauken, 5605 N. Crescent Blvd, Pennsauken, New Jersey 08110 or to such other address as the Municipality may designate in writing; and a copy of said notice or communication by the Sponsor to the Municipality shall be sent by the Sponsor to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.

13. In the event of a breach of this Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court, Chancery Division, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the NJHMFA Law.

14. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a sufficient number of counterparts to evidence the execution of this Agreement by each party hereto.

IN WITNESS WHEREOF, Sponsor and Municipality have executed this Agreement as of the date first above-written.

PENNSAUKEN TOWERS PRESERVATION PARTNERS, LLC

By: Pennsauken Affordable Partners GP LLC,
its managing member

By: RedArcPRD Venture Partners LLC,
its sole member

By: Pennsauken Operator Group,
LLC, its managing member

By: PRD Preservation
Partners LLC, its
managing member

Witness

By: _____
James McGrath, Sole Member

(SEAL)

ATTEST:

TOWNSHIP OF PENNSAUKEN

Pamela Scott-Forman,
Municipal Clerk

By: _____
Jessica Rafeh, Mayor

(SEAL)