

839 MANAGEMENT LLC

and

839 PROSPECT TOWNHOMES LLC

and

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

ASSIGNMENT AND ASSUMPTION
OF PILOT AGREEMENT

Dated as of January 12, 2022

**ASSIGNMENT AND ASSUMPTION OF
PILOT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PILOT AGREEMENT (this "Assignment Agreement") dated as of January 12, 2022 (the "Effective Date"), by and among the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, 4th floor, Mineola, NY 11501 (the "Agency"), 839 MANAGEMENT LLC, a limited liability company organized and existing under the laws of the State of New York and authorized to do business in the State of New York, having an office at 146 North Central Avenue, Valley Stream, NY 11580 (the "Assignor"), and 839 Prospect Townhomes LLC, a limited liability company duly organized and existing under the laws of the State of New York, having an office at 301A Central Avenue, Lawrence, NY 11559 (the "Company" or "Assignee").

RECITALS:

WHEREAS, the Assignor presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in a certain parcel of land located at 839 Prospect Avenue, Westbury, Town of North Hempstead, County of Nassau, New York (Section: 11; Block: 1; Lot: 45-47) (the "Land"), (2) the renovation of the existing building (collectively, the "Building") on the Land, together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment"), all of the foregoing to constitute an 18-unit multi-family residential rental facility, a portion of which units shall be affordable units (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing; (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity as may be designated by the Company and agreed upon by the Agency; and (D) the sublease thereof to such other person(s) or entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Assignor received Financial Assistance with respect to the Project Facility from the Agency; and

WHEREAS, the Agency appointed the Assignor as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and the Agency subleased the Project Facility to the Assignor, all pursuant to the terms and conditions set forth in a certain Sublease Agreement dated as of December 1, 2017 between the Assignor and the Agency relating to the Project Facility (as otherwise amended, modified, supplemented or restated from time to time, and collectively, the "Lease") and the other Transaction Documents (as defined in the Lease); and

WHEREAS, pursuant to a notification and consent request letter dated September 29, 2021 (the "Consent Request"), the Assignor and the Assignee (as such term is hereinafter defined) have requested that the Agency consent to (a) the sale and transfer of the Assignor's 100% ownership

of the Project Facility to 839 Prospect Townhomes LLC (the "Assignee"), (b) amendment of the Lease and other Transaction Documents (including the assignment, amendment or restatement of finance mortgages); and (c) the addition of new indemnitor(s), to be determined and accepted by the Nassau County Industrial Agency at its sole discretion, respectively (the "New Indemnitor"), under the Environmental Indemnity (collectively, "Proposed Transaction"); and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement, dated as of December 1, 2017 (the "PILOT Agreement"), by and between the Assignor and the Agency, the Assignor agreed to make certain payments in lieu of real property taxes with respect to the Land and the improvements thereon, and such obligation is secured by a certain Mortgage and Assignment of Leases and Rents, dated as of December 1, 2017 (the "PILOT Mortgage"), made by the Agency and the Assignor, as mortgagors, in favor of the County of Nassau, as mortgagee (in such capacity, the "PILOT Mortgagee"), pursuant to which the Agency and the Assignor granted a first mortgage lien on the Land and the improvements thereon to the PILOT Mortgagee; and

WHEREAS, the Assignor desires to assign all of its right, title and interest in and to the PILOT Agreement to the Assignee and the Assignee desires to assume all of the obligations of the Assignor under the PILOT Agreement; and

WHEREAS, the Agency is willing to consent to the assignment of the Assignor's interest in the PILOT Agreement to the Assignee only if the Assignee agrees to be bound by and comply with each of the terms and conditions set forth in the PILOT Agreement;

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor, the Assignee and the Agency mutually covenant, warrant and agree as follows:

1. Assignment. The Assignor hereby assigns, conveys and transfers to the Assignee all of the Assignor's right, title and interest in, to and under the PILOT Agreement.
2. Assumption. The Assignee accepts the assignment of and hereby assumes and agrees to perform, fulfill and comply with all covenants and obligations to be performed, fulfilled or complied with by the Assignor under the PILOT Agreement arising from and after the Effective Date.
3. The Assignee's Indemnification of the Assignor and Agency. The Assignee shall and does hereby indemnify the Assignor and the Agency against, and agrees to defend (with counsel reasonably selected by the indemnified party) and hold the Assignor and the Agency harmless from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses (including without limitation, reasonable attorneys' fees), incurred by the Assignor or the Agency, as the case may be, in connection with the PILOT Agreement based upon or arising out of any breach or alleged breach of the PILOT Agreement by the Assignor occurring or alleged to have occurred on or after the Effective Date.

4. The Assignor's Indemnification of the Assignee and Agency. The Assignor shall and does hereby indemnify the Assignee and the Agency against and agrees to defend (with counsel reasonably selected by the indemnified party) and hold the Assignee and the Agency harmless from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses (including, without limitation, reasonable attorneys' fees), incurred by the Assignee or the Agency, as the case may be, in connection with the PILOT Agreement directly based upon or arising out of any breach or alleged breach of the PILOT Agreement by the Assignor occurring or alleged to have occurred before the Effective Date.

5. Consent to Assignment. The Agency hereby consents to the foregoing assignment and assumption of the PILOT Agreement and acknowledges that all requirements of the PILOT Agreement with respect to the assignment thereof have been complied with or compliance has been waived by the Agency. The parties agree that any provision of the PILOT Agreement prohibiting or restricting the transfer and assumption contemplated hereby shall be deemed complied with for this transaction only, but shall continue to apply to any future assignment, assumption or transfer by the Assignee.

6. Representations, Covenants and Warranties. All terms, conditions, covenants, representations and warranties of the Assignor contained in the PILOT Agreement, except as expressly modified hereby, are hereby adopted, ratified and confirmed by the Assignee as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Assignment Agreement.

7. Governing Law. This Assignment Agreement, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

8. Successors and Assigns. The Assignor, the Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties. This Assignment Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

9. Counterparts. This Assignment Agreement may be executed in any number of counterparts and by the Assignor, the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Assignment Agreement.

10. Severability. Any provision of this Assignment Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Assignment Agreement and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

11. Conflicting Provisions. In the event of any conflict in the terms and provisions of this Assignment Agreement and the terms and provisions of the PILOT Agreement, the terms and provisions of this Assignment Agreement shall govern.

12. Entire Agreement. This Assignment Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

(Remainder of Page Intentionally Left Blank – Signature Pages Follow)

IN WITNESS WHEREOF, this Assignment Agreement has been duly executed by the parties hereto as of the day and year first above written.

Assignor:

839 MANAGEMENT LLC

By: 

James J. Villar
Managing Member

Assignee:

839 PROSPECT TOWNHOMES LLC

BY: HASHKAOT LLC, AS ITS MANAGING MEMBER

By: 

Daniel Goldstein
Managing Member

Agency:

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

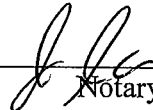
By: 

Harry Coghlan
Chief Executive Officer/Executive Director

(Signature Page to Assignment of PILOT)

STATE OF NEW YORK)
)SS.:
COUNTY OF)

On the 10th day of January, 2022, before me, the undersigned, personally appeared **James J. Vilardi**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

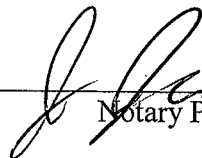


Notary Public

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

JOHN J. ANZALONE
NOTARY PUBLIC STATE OF NEW YORK
SUFFOLK COUNTY
LIC# 02AN6256008
COMM. EXP. MARCH 12, 20 24

On the 4th day of January, 2022, before me, the undersigned, personally appeared **Daniel Goldstein**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

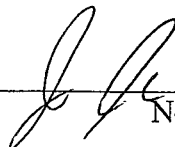


Notary Public

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

JOHN J. ANZALONE
NOTARY PUBLIC STATE OF NEW YORK
SUFFOLK COUNTY
LIC# 02AN6256008
COMM. EXP. MARCH 12, 20 24

On the 4th day of January, 2022, before me, the undersigned, personally appeared **Harry Coghlan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

(Acknowledgment Page to Assignment of PILOT)

JOHN J. ANZALONE
NOTARY PUBLIC STATE OF NEW YORK
SUFFOLK COUNTY
LIC# 02AN6256008
COMM. EXP. MARCH 12, 20 24