

ROSLYN PLAZA HOUSING ASSOCIATES, L.P.

and

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

FIRST AMENDMENT TO PILOT AGREEMENT

Dated as of December 23, 2020

**FIRST AMENDMENT TO
PILOT AGREEMENT**

THIS FIRST AMENDMENT TO PILOT AGREEMENT (this “Amendment”) dated as of December 23, 2020 (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”), and ROSLYN PLAZA HOUSING ASSOCIATES, L.P., a limited partnership organized and existing under the laws of the State of New York, having an office at 277 Northern Blvd., Suite 203, Great Neck, NY 11021-4703 (the “Company”).

RECITALS

WHEREAS, ROSLYN PLAZA HOUSING ASSOCIATES, L.P., a limited partnership organized and existing under the laws of the State of New York (the “Applicant”), has presented an application for financial assistance (the “Application”) to the Agency, which Application requests that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the retention of an interest in an approximately 4.29 acre parcel of land located at 101-172 Laurel Street, Roslyn Heights, Town of North Hempstead, Nassau County, New York (Section: 7; Block: 60; Lot: 321) (the “Land”), (2) the retention of seven (7) buildings with an aggregate size of approximately 96,806 sq. ft. developed with 104 residential rental apartments (103 affordable housing units, and one (1) superintendent unit) (collectively, the “Building”) on the Land, together with related improvements to the Land, including surface parking spaces, (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the “Project Facility”), all of the foregoing for the continued use by the Applicant as an affordable rental apartment 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 in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Applicant was previously granted a 20-year Payment in Lieu of Taxes (“PILOT”) Agreement as part of certain financial assistance for the existing improvements at the Land; and

WHEREAS, the Applicant is seeking to extend the term of the PILOT Agreement and to make additional capital expenditures, with a concomitant extension of the commitment to the Agency to operate the Project Facility as affordable housing, including renovations to the Project Facility that include replacing the electric panels, replacing exterior trims, installing storm doors, constructing porticos and replacing concrete sidewalks; and

WHEREAS, to secure loan refinancing to maintain the Project Facility, the Applicant needs to ensure a stable tax base during the term of the lender mortgage that will finance the capital expenditures; and

WHEREAS, any approval of the Project is contingent upon, among other things, a final determination by the members of the Agency to proceed with the Project following determinations by the Agency that: (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project and the Financial Assistance have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act, Article 8 of the Environmental Conservation Law (the “SEQR Act”) and the regulations adopted pursuant thereto (the “Regulations” and together with the SEQR Act, collectively, “SEQRA”), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project or the Project Facility (collectively, the “Applicable Laws”); and

WHEREAS, by resolution adopted by the members of the Agency on September 17, 2020 (the “Preliminary Inducement Resolution”), the Agency, following a review of the Application, determined to take preliminary action toward amending and extending the straight leasing of the Project for the Company and made a determination to proceed with the Project; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on November 30, 2020 to the chief executive officer of Nassau County, New York and of each other affected tax jurisdiction within which the Project Facility is or is to be located; (B) caused notice of the Public Hearing to be published on November 29, 2020 in the Nassau edition of Newsday, a newspaper of general circulation available to residents of the County of Nassau, New York; (C) caused the Public Hearing to be conducted on December 15, 2020, at 4:00 pm., local time, electronically, in furtherance of the provisions of Section 859-a of the General Municipal Law requiring interested parties be provided a reasonable opportunity, both orally and in writing, to present their views with respect to the Project, and pursuant to Governor Cuomo’s Executive 202.15 issued on April 9, 2020, as extended by Executive Order 202.29 issued on May 8, 2020, Executive Order 202.39, issued on June 7, 2020, and Executive Order 202.55, issued on August 6, 2020, Executive Order 202.60, issued on September 4, 2020, Executive Order 202.67, issued on October 5, 2020, Executive Order 202.72, issued on November 3, 2020, and Executive Order 202.79, issued on December 2, 2020, suspending the Open Meetings Law and authorizing the conduct of public hearings through use of telephone conference, video conference and/or other similar service, by broadcasting the Public Hearing live on the Agency’s Youtube channel at <https://www.youtube.com/channel/UCuERg-5BYx9VSdBVHUPTYJw/featured>, as well as by providing public access to provide oral comments via Zoom through the Agency’s website at a Nassauida.org; and (D) caused a report of the Public Hearing (the “Report”) to be prepared which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, in accordance with Section 874(4) of the Act, (A) the Executive Director of the Agency caused notice of a meeting of the Agency (the “IDA Meeting”) with respect to the proposed deviation from the Agency’s uniform tax exemption policy and guidelines to be mailed on November 30, 2020 to the chief executive officer of each affected tax jurisdiction; and (B) the members of the Agency conducted the IDA Meeting on December 16, 2020 and reviewed any written comments or correspondence regarding the proposed deviation from the Agency’s uniform tax exemption policy and approved the proposed deviation; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the “Regulations,” and collectively with the SEQR Act, “SEQRA”), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Company and made any necessary comments to the members of the Agency, and by resolution of the members of the Agency adopted on December 16, 2020, the Agency decided to conduct an uncoordinated review of the Project and determined that the Project will not have a significant adverse environmental impact and that an environmental impact statement will not be prepared; and

WHEREAS, by resolution adopted by the members of the Agency on December 16, 2020 (the “Authorizing Resolution”), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance and to enter into the “straight lease transaction” (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as defined in the Lease Agreement); and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement originally dated as of December 1, 2017 (the “PILOT Agreement”), the Company has agreed to make certain payments in lieu of real property taxes with respect to the Land and the Improvements thereon. The obligations under the PILOT Agreement are secured by an Irrevocable Standby Letter of Credit issued for the benefit of the Agency (the “Letter of Credit”); and

WHEREAS, the members of the Agency approved the proposed Project and the additional Financial Assistance pursuant to a resolution adopted on December 16, 2020 and authorized the Agency *inter alia*, to enter into this Amendment; and

WHEREAS, the Agency and the Company wish to amend the PILOT Agreement to provide for partial additional abatement from real property taxes for the benefit of the Company comprising a portion of the Financial Assistance;

AGREEMENTS

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

1. Amendments:

Preamble: The purpose of the following amendments is to add an additional approximately 17 years of abatement term to the PILOT Agreement years 21 through 37

- a. The lead subparagraph of Subsection (B) (1) of Section 2 of the PILOT Agreement is amended and restated in its entirety to read as follows:

“(B) Base PILOT Payments. From the Amended Abatement Commencement Date through and including the last day of the thirty-fifth 35th) fiscal tax year thereafter (i.e. the 2055 General tax year and the 2054/55 School tax year) (such date, the "Amended Abatement Expiration Date" and such period, the “Term”), the Company shall make the following payments in lieu of real property taxes and assessments levied and/or assessed by the Taxing Entities against or with respect to the Facility as set forth on Schedule B" hereto, subject to the provisions of Section 2(B)(3) (collectively, "Base PILOT Payments")”

- b. The remainder of Subsection (B) (1) of Section 2 of the PILOT Agreement shall remain unchanged.
- c. Schedule B of the PILOT Agreement is amended and restated in its entirety to read as follows:

SCHEDULE B

PILOT PAYMENT SCHEDULE

Term:

<u>Tax Year</u> ¹	<u>Total PILOT Payment</u>
2019 General / 2018/19 School	\$262,049
2020 General / 2019/20 School	\$272,636
2021 General / 2020/21 School	\$286,268
2022 General / 2021/22 School	\$293,424
2023 General / 2022/23 School	\$300,760

¹ Actual PILOT Commencement Date is subject to timely acceptance of the Application by the appropriate tax assessor(s).

<u>Tax Year</u> ²	<u>Total PILOT Payment</u>
2024 General / 2023/24 School	\$308,279
2025 General / 2024/25 School	\$315,986
2026 General / 2025/26 School	\$323,885
2027 General / 2026/27 School	\$331,983
2028 General / 2027/28 School	\$340,282
2029 General / 2028/29 School	\$348,789
2030 General / 2029/30 School	\$357,509
2031 General / 2030/31 School	\$366,447
2032 General / 2031/32 School	\$375,608
2033 General / 2032/33 School	\$384,993
2034 General / 2033/34 School	\$394,623
2035 General / 2034/35 School	\$404,489
2036 General / 2035/36 School	\$414,601
2037 General / 2036/37 School	\$424,966
2038 General / 2037/38 School	\$435,590
2039 General / 2038/39 School	\$446,480
2040 General / 2039/40 School	\$457,642
2041 General / 2040/41 School	\$469,083
2042 General / 2041/42 School	\$480,810
2043 General / 2042/43 School	\$492,830
2044 General / 2043/44 School	\$505,151
2045 General / 2044/45 School	\$517,780
2046 General / 2045/46 School	\$530,724
2047 General / 2046/47 School	\$543,992
2048 General / 2047/48 School	\$557,592
2049 General / 2048/49 School	\$571,532
2050 General / 2049/50 School	\$585,820
2051 General / 2050/51 School	\$600,466
2052 General / 2051/52 School	\$615,477
2053 General / 2052/53 School	\$630,864
2054 General / 2053/54 School	\$646,636
2055 General / 2054/55 School	\$662,802

2. Representations, Covenants and Warranties. All terms, conditions, covenants, representations and warranties of the Company contained in the PILOT Agreement, except as expressly modified hereby, are hereby adopted, ratified and confirmed by the Company as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment. Provided further that the Agency and the Company expressly recognizes that

² Actual PILOT Commencement Date is subject to timely acceptance of the Application by the appropriate tax assessor(s).

the Letter of Credit continues to secure the Company's obligations, which includes the additional PILOT Payments provided for herein.

7. Governing Law. This Amendment, 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 Company and the Agency, shall include the legal representatives, successors and assigns of those parties. This Amendment shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

9. Counterparts. This Amendment may be executed in any number of counterparts and by 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 Amendment.

10. Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment 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 Amendment and the terms and provisions of the PILOT Agreement, the terms and provisions of this Amendment shall govern.


12. Entire Agreement. This Amendment 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)

(Signature Page to First Amendment to PILOT)

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

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Harry Coghlan
Chief Executive Officer / Executive Director

**ROSLYN PLAZA HOUSING ASSOCIATES,
L.P.**

By: **RPHA ASSOCIATES, LLC**, its general
partner

By: _____
Robert M. Pascucci
Sole Member

(Signature Page to First Amendment to PILOT)

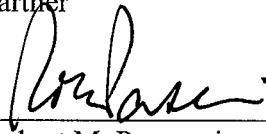
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**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Harry Coghlan
Chief Executive Officer / Executive Director

**ROSLYN PLAZA HOUSING ASSOCIATES,
L.P.**

By: **RPHA ASSOCIATES, LLC**, its general
partner


By:  _____
Robert M. Pascucci
Sole Member

(Acknowledgment Page to First Amendment to PILOT)

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

On the 18th day of December 2020, 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.

JOHN J. ANZALONE
NOTARY PUBLIC STATE OF NEW YORK
SUFFOLK COUNTY
LIC# 02AN6256008 29
EXPIRES MARCH 12, 2021



Notary Public

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

On the ___ day of December 2020, before me, the undersigned, personally appeared **Robert M. Pascucci**, 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 First Amendment to PILOT)

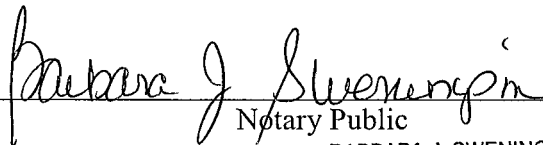
STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the ___ day of December 2020, 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

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

On the *24* day of December 2020, before me, the undersigned, personally appeared **Robert M. Pascucci**, 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
BARBARA J. SWENINGSON
Notary Public, State of New York
No. 4989078
Certified in Nassau County
Comm. Expires November 25, 20*21*