

AMENDMENT NO. 1 TO UNIFORM PROJECT AGREEMENT

THIS AMENDMENT NO. 1 TO UNIFORM PROJECT AGREEMENT (this “Amendment”) dated as of December 14, 2023, by and between 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 555 STEWART GARDEN CITY, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York, having an office at 1550 W. McEwen Drive, Suite 200, Franklin, TN 37067 (the “Company”).

WITNESSETH:

WHEREAS, the Company on behalf of itself and entities formed or to be formed on its behalf (together with the Company, 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 acquisition of an interest in an approximately 4.45 acre parcel of land located at 555 Stewart Avenue, Village of Garden City, Town of Hempstead, Nassau County, New York (Section: 44; Block: 076; Lot: 15) (the “Land”), (2) the construction of an approximately 207,800 square foot four-story residential facility (collectively, the “Building”) on the Land, together with related improvements to the Land and (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 use by the Applicant as a multi-family residential rental facility with approximately 150-units, at least ten percent (10%) of which units shall be affordable units; (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/or 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 Agency appointed the Company as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Project Facility, all pursuant to the terms and conditions set forth in the Uniform Project Agreement dated as of May 1, 2021 between the Company and the Agency (as amended, modified, supplemented and restated to date, the “Uniform Project Agreement”), and the Sublease Agreement dated as of May 1, 2021 between the Company and the Agency (as amended, modified, supplemented and restated to date, the “Sublease Agreement”), and the other Transaction Documents (as defined in the Sublease Agreement); and

WHEREAS, the Company has requested that the Agency consent to the amendment of the Uniform Project Agreement, the Sublease Agreement and the other Transaction Documents to extend the expiration date of the Sales Tax Exemption (as defined in the Uniform Project Agreement) and to extend the Scheduled Completion Date (as defined in the Sublease Agreement) to allow the Company to complete the Project in the manner contemplated by the Uniform Project Agreement, the Sublease Agreement and the other Transaction Documents;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents.

SECTION 2. AMENDMENTS.

SECTION 2.1 Subsection (b) of Section 4.3 of the Uniform Project Agreement is amended and restated in its entirety to read as follows:

“The Company, as agent for the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the acquisition, construction, renovation, rehabilitation and equipping of the Project Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (x) the completion of the Project, or (y) June 30, 2024 as same may be extended by agreement of the Agency (“Termination Date”); provided, however, that the Agency may extend the Company's agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.”

SECTION 3. CONDITIONS.

SECTION 3.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof; of the following conditions precedent:

(A) the execution and delivery by the Company and the Agency of an original or counterpart originals of this Amendment;

(B) the Company shall deliver such other consents, waivers, documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment;

(C) all other documents and legal matters in connection with this Amendment and the transactions contemplated by the Uniform Project Agreement as amended by this Amendment, shall be satisfactory in form and substance to the Agency; and

(D) the Company shall pay the Agency's consent fee in the amount of \$1,000 and all fees and expenses (including attorneys' fees and expenses) incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated herein.

SECTION 4. MISCELLANEOUS.

SECTION 4.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Company contained in the Transaction Documents, except as expressly modified hereby, are ratified, confirmed and reaffirmed 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.

(B) The Company represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(C) The Company represents and warrants to the Agency that no Event of Default or Recapture Event specified in the Uniform Project Agreement, the Sublease Agreement or in any of the other Transaction Documents has occurred and is continuing and no event has occurred and is continuing which with notice or lapse of time or both would become an Event of Default or Recapture Event specified in the Uniform Project Agreement, the Sublease Agreement or any of the other Transaction Documents.

SECTION 4.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the Uniform Project Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other documents furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4 Reference to Project Agreement. The Uniform Project Agreement, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Uniform Project Agreement, as amended hereby, are hereby amended so that any reference to the "Project Agreement" in the Uniform Project Agreement, the Transaction Documents or such other agreements, documents or instruments executed in connection with the Uniform Project Agreement shall mean a reference to the Uniform Project Agreement, as amended hereby.

SECTION 4.5 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.

SECTION 4.6 Successors and Assigns. The Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7 Counterparts; Electronic Transmission. 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. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or email shall be effective as delivery of a manually executed counterpart of this Amendment. This Amendment may be modified only by a written agreement signed by Authorized Representatives of the Company and the Agency.

SECTION 4.8 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.

SECTION 4.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the Uniform Project Agreement, the terms and provisions of this Amendment shall govern.

SECTION 4.10 No Waiver. Notwithstanding any provision in the Transaction Documents to the contrary, the Agency's consent does not and shall not be construed to mean that there are no defaults, Events of Default or Recapture Events under the Uniform Project Agreement, the Sublease Agreement or any other Transaction Document. The Company acknowledges and agrees that nothing in this Amendment or in any document, instrument or agreement executed in connection with this Amendment shall constitute a waiver by the Agency of any default, Event of Default or Recapture Event under the Uniform Project Agreement, the Sublease Agreement or any of the other Transaction Documents.

SECTION 4.11 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 THIS PAGE INTENTIONALLY LEFT BLANK]

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

COMPANY:

555 STEWART GARDEN CITY, LLC

By: 

Timothy W. Downey
Chief Manager

Agency:

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

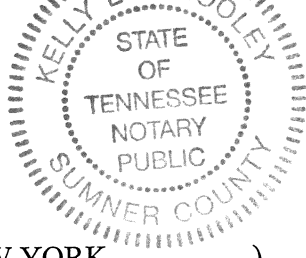
By: 

Sheldon L. Shrenkel
CEO/Executive Director

[Signature Page to Amendment No. 1 to Uniform Project Agreement]

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

On the 28 day of November, 2023, before me, the undersigned, personally appeared **Timothy W. Downey**, 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.



Kelly E. Schooley
Notary Public

My Commission Expires May 20, 2024

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

On the 13th day of December, 2023, before me, the undersigned, personally appeared **Sheldon L. Shrenkel**, 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.

Paul V. O'Brien
Notary Public

Paul V O'Brien
Notary Public State of New York
No. 02OB6235944
Qualified in Nassau County
Commission Expires February 14, ~~2019~~ 2027