

Execution Version

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

PINE TOWN HOMES, L.P.

FIRST AMENDMENT TO PILOT AGREEMENT

Dated as of July 29, 2022

FIRST AMENDMENT TO PILOT AGREEMENT

THIS FIRST AMENDMENT TO PILOT AGREEMENT (this “Amendment”) dated as of July 29, 2022 (the “Effective Date”), 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, Mineola, NY 11501 (the “Agency”), and PINE TOWN HOMES, L.P., a limited partnership duly organized and existing under the laws of the State of New York, having an office at c/o Metropolitan Realty Group, LLC, 60 Cutter Mill Road, Suite 200, Great Neck, NY 11021 (the “Company”).

WITNESSETH:

WHEREAS, the Company submitted an application for financial assistance (the “Application”) to the Agency requesting that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 3.6 acre parcel of land located at 151B East Pine Street, City of Long Beach, County of Nassau, New York (the “Land”), which Land is more particularly described on Schedule A attached hereto, (2) the renovation of eight (8) existing two-story multifamily housing structures (comprised of approximately 130 low-income housing units) with a collective gross residential square footage of approximately 125,000 sq. ft., located on the Land, together with related improvements (collectively, the “Building”), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the “Equipment”), all of the foregoing to continue to constitute a housing complex comprised of approximately 130 low-income housing rental 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, including potential exemptions or partial exemptions from sales and use taxes and real property taxes (but not including special assessments and ad valorem levies) (the “Financial Assistance”); and (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

WHEREAS, the Agency appointed the Company as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Project Facility and the Agency leased the Project Facility to the Company, all pursuant to the terms and conditions set forth in the Lease Agreement dated as of June 1, 2011 between the Company and the Agency (as amended, the “Lease”), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, Long Beach Apartments II, LLC (the “General Partner”), Scott Jaffee (“Jaffee”) and Anthony A. Nickas (“Nickas” and together with the General Partner and Jaffee, collectively, the “Existing Guarantors”) guaranteed the timely and proper payment and performance of the Company’s obligations under the Lease and the other Transaction Documents, all pursuant to a Guaranty dated as of March 22, 2017 (the “2017 Guaranty”) from the Existing Guarantors in favor of the Agency; and

WHEREAS, the Company, Jaffee and Nickas made certain representations, covenants and indemnifications in favor of the Agency with respect to the environmental condition of the Land and the improvements thereon, all pursuant to an Environmental Compliance and Indemnification Agreement dated as of March 22, 2017 (the “2017 Environmental Indemnification”) from the Company, Jaffee and Nickas in favor of the Agency; and

WHEREAS, in 2018, the Company requested that the Agency consent to (i) the transfer by Nickas of his 50% interest in Pine Town Homes GP, LLC ("Pine Town GP") to SE Pine Town LLC ("SE Pine Town"), (ii) the replacement of Nickas by Scott Jaffee as guarantor under the Transaction Documents, (iii) Pilot House Manager, Inc. withdrawing as a Manager of Long Beach Apartments 11, LLC ("Long Beach Apartments"), and (iv) the transfer by Edward Lubitz of his 10% Class B interest in Long Beach Apartments to Pine Town GP (collectively, the "2018 Transaction"); and

WHEREAS, the 2018 Transaction was approved by the Agency pursuant to Resolution 2018-24, dated May 8, 2018; and

WHEREAS, Long Beach Apartments has been terminated by SE Pine Town and its interests / assets have solely devolved to SE Pine Town; and

WHEREAS, pursuant to a notification and consent request letter from the Company, dated June 22, 2022, the Company has requested that the Agency consent to the transfer of the limited partnership interests in the Company owned by Hudson SLP, LLC, owning .01% of the partnership interests in the Company, and Hudson Pine Town LLC, owning 99.98% of the partnership interests in the Company (collectively, the “Limited Partners”), to Pine Town Investors LLC (the “Assignee”), a limited liability company formed and solely owned by the members of SE Pine Town and/or for the benefit of the immediate family members of both members thereof (the “Proposed Transaction”); and

WHEREAS, the Limited Partners are Low Income Housing Tax Credit investors, with no day-to-day management obligations for the Project, and the low income tax credit period has expired; and

WHEREAS, the Assignee shall be managed solely by one or both of the members of SE Pine Town, the General Partner that manages the Company; and

WHEREAS, the Agency is willing to consent to the Proposed Transaction, subject to the terms and conditions of this Amendment;

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 Effective as of the Effective Date, Section 11.1(B) of the PILOT Agreement between the Agency and the Company, dated June 1, 2011, as amended from time to time (the "PILOT Agreement"), is hereby amended and restated in its entirety to read as follows:

"(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Pine Town Homes, L.P.
c/o Metropolitan Realty Group, LLC
60 Cutter Mill Road, Suite 200
Great Neck, NY 11021
Attn: Scott Jaffee

WITH A COPY TO:

Forchelli Deegan Terrana LLP
333 Earle Ovington Blvd, Suite 1010
Uniondale, NY 11553
Attn: Daniel P. Deegan, Esq.

WITH A COPY TO:

New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022
Attention: Executive Vice President

WITH A COPY TO:

Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive
Mail Stop B4F
McLean, Virginia 22102
Attention: Director of Multifamily Loan Servicing

Facsimile: (703) 714-3003
Telephone: (703) 903-2000

WITH A COPY TO:

Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive
McLean, Virginia 22102
Attention: Associate General Counsel - Multifamily
Legal Department
Facsimile: (703) 903-2885
Telephone: (703) 903-2000

WITH A COPY TO:

Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive
Mail Stop B4Q
McLean, Virginia 22102
Attention: Director of Multifamily Loan Accounting
Facsimile: (703) 714-3273
Telephone: (703) 903-2000

WITH A COPY TO:

Prudential Affordable Mortgage Company
8401 Greensboro Drive, Second Floor
McLean, VA 22102
Attention: President – Affordable Housing
Telephone Number: (703) 610-1340
Telecopier Number: (703) 610-1405

WITH A COPY TO:

Prudential Asset Resources
2100 Ross Avenue, Suite 2500
Dallas, TX 75201
Attention: Director – Structured Products
Telephone Number: (214) 777-4523
Telecopier Number: (214) 777-4556

IF TO THE AGENCY:

Nassau County Industrial Development Agency

One West Street
Mineola, NY 11501
Attn: Chief Executive Officer

WITH A COPY TO:

Harris Beach PLLC
333 Earle Ovington Blvd, Suite 901
Uniondale, NY 11553
Attn: Andrew Komaromi, Esq.”

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 documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment; and

(C) the Company shall pay 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) 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 the PILOT Mortgage continues to secure the Secured Obligations, as such term is defined in the PILOT Mortgage that includes the PILOT Obligations (as such term is defined in the PILOT Mortgage) that includes the additional PILOT Payments provided for herein.

(B) 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.

(C) 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.

(D) 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.

(E) 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.

(F) 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.

(G) 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:

PINE TOWN HOMES, L.P.

By: SE Pine Town LLC, its General Partner

By:  _____

Scott Jaffee

Managing Member

Agency:

NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

Colleen Pereira

Administrative Director

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

Company:

PINE TOWN HOMES, L.P.

By: SE Pine Town LLC, its General Partner

By: _____

Scott Jaffee

Managing Member

Agency:

NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

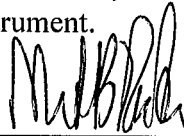
By:  _____

Colleen Pereira

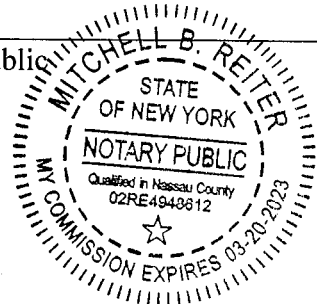
Administrative Director

STATE OF New York)
)SS.:
COUNTY OF Nassau)

On the 15th day of July, 2022, before me, the undersigned, personally appeared **Scott Jaffee**, 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 ____ day of July, 2022, before me, the undersigned, personally appeared **Colleen Pereira**, 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)
)SS.:
COUNTY OF)

On the ____ day of July, 2022, before me, the undersigned, personally appeared **Scott Jaffee**, 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 28th day of July, 2022, before me, the undersigned, personally appeared **Colleen Pereira**, 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

John J. Anzalone
Notary Public State of New York
Suffolk County LIC# 02AN6256008
Comm Exp. March 12, 2024

SCHEDULE A

PARCEL I

SECTION: 59: BLOCK: 277 LOT: 3

ALL that certain plot, piece or parcel of land situate, lying and being in the City of Long Beach, County of Nassau, and State of New York bounded and described as follows:

BEGINNING at a point the following two courses and distances from the corner formed by the intersection of the North side of Pine Street and the east side of Park Place, both streets as shown on Map No. 4 Amending and Subdividing Block 92 of Map No. I, Estates of Long Beach and filed in the Office of the County Clerk of the County of Nassau on January 3, 1926 as Case No. 710;

1. North 41 degrees 22 minutes 35 seconds East, 24.68 feet;
2. South 84 degrees 30 minutes 40 seconds East, 8.57 feet from said point of BEGINNING;

SAID POINT OR PLACE OF BEGINNING is also located 85.61 feet Easterly from the corner formed by the intersection of the North side of Pine Street and the East side of Park Place as both streets are currently located;

RUNNING THENCE North 5 degrees 29 minutes 20 seconds East along the Easterly line of the proposed Day Center, 100 feet;

THENCE South 84 degrees 30 minutes 40 seconds East, 411.17 feet und North 85 degrees 23 minutes 45 seconds East, 616.97 feet along a line 120 feet North of and parallel with Pine Street, as shown on the aforementioned map to the Northwest corner of a proposed park area;

THENCE South 3 degrees 16 minutes 14 seconds East, along the said Westerly side of the proposed park area, 100.02 feet to the proposed new line of Pine Street;

THENCE, along the proposed new line of Pine Street, which is 20 feet North of and parallel with the North side of Pine Street as shown on the aforementioned map, the following two courses and distances:

1. South 85 degrees 23 minutes 45 seconds West, 623.48 feet; and
2. North 84 degrees 30 minutes 40 seconds West, 420 feet to the point or place of BEGINNING.

PARCEL II

SECTION: 59 BLOCK: 104 LOT 78

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of Long Beach, County of Nassau and State of New York being bounded and described as follows:

BEGINNING at a point on the Northerly side of Pine Street distant 150 feet West of the corner formed by the intersection of the Northerly side of Pine Street and the Westerly side of Long Beach Road, both streets as shown on Map No. 1, Estates of Long Beach, filed in the Office of the County Clerk of the County of Nassau on April 20, 1911 as File No. 31, Case No. 231;

SAID POINT OR PLACE OF BEGINNING is also located 100 feet Westerly from the corner formed by the intersection of the North side of Pine Street and the West side of Marginal Road Bridge Plaza as both streets are currently located;

RUNNING THENCE South 89 degrees 35 minutes 00 seconds West along the Northerly side of Pine Street, 540 feet;

THENCE North 00 degrees 25 minutes 00 seconds West, 100 feet;

THENCE North 89 degrees 35 minutes 00 seconds East, 540 feet; and

THENCE South 00 degrees 25 minutes 00 seconds East, 100 feet to the Northerly side of Pine Street, the point or place of BEGINNING.