

AGREEMENT FOR PAYMENT IN LIEU OF TAXES

This Payment in Lieu of Taxes (PILOT) Agreement is made this _____ day of October, 2018, by and between Pennsylvania Senior Housing Associates, LP, a Pennsylvania Limited Partnership, with offices at 2450 Shenango Valley Freeway, Hermitage, PA 16148, Mercer County, Pennsylvania (Sponsor),

AND

1. The Warren County School District with offices at 6280 Market Street, Russell, PA 16345, Warren County, Pennsylvania; and
2. The County of Warren (County) with offices at 204 Fourth Avenue, Warren, PA 16365, Warren County, Pennsylvania; and
3. The City of Warren (City) with offices at 318 West Third Avenue, Warren, PA 16365, Warren County, Pennsylvania

(Collectively, the Taxing Authorities)

WHEREAS, the Sponsor proposes to construct a senior housing project known as Eagles Crest, located at 237 Pennsylvania Avenue West, in the City and County of Warren, Pennsylvania and being further identified in the tax records of Warren County as Tax Parcel ID No. WN-576-7732 (Project); and

WHEREAS, the Project will consist of the construction of a new, four-story building containing forty (40) affordable housing rental units to be available to individuals aged fifty-five (55) and over; and

WHEREAS, the majority of the financing for the Project will be derived from an allocation of Low Income Housing Tax Credits (LIHTC), available through the Pennsylvania Housing Finance Agency (PHFA), the agency responsible for awarding such credits which are allocated pursuant to Section 42 of the Internal Revenue Code of 1986 (Code) as amended; and

WHEREAS, if LIHTC are awarded, the Project will be subject to the requirements for PHFA Low Income Housing Tax Credits and Section 42 of the Code; and

WHEREAS, in order to qualify for LIHTC, PHFA now requires that the Sponsor provide evidence of a positive fifteen year cash flow; and

WHEREAS, given the limits on Sponsor's ability to increase rents as provided in the Code, and projected utility and other operating cost increases through year fifteen (15), the Project will not cash flow unless tax relief is awarded by the Taxing Authorities; and

WHEREAS, this PILOT is being offered as an incentive for Sponsor to complete the Project because, as stated by the Sponsor, the Project will not be undertaken without the requested tax relief; and

WHEREAS, in addition to the proceeds received from the sale of the LIHTC, conventional financing will also be required in order to complete the Project; and

WHEREAS, the governing body of each of the Taxing Authorities has determined that there is a need for this housing Project within the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. That the proposed Project will meet, or does meet, an existing housing need; and
2. That the Project is located in a district which qualifies for a three-year tax abatement under the Local Economic Recovery Tax Abatement (LERTA) Program; and
3. The three-year LERTA period will commence immediately upon issuance of a Certificate of Occupancy by the City of Warren Building and Codes Department; and
4. For the twelve (12) years following the expiration of the LERTA period, the Project will be exempt from real property taxation provided that Payments in Lieu of Taxes are made to the Taxing Authorities, beginning when the structure is completed and occupied, according to the following schedule:
 - a. Pursuant to the requirements of 72 P.S. § 5020-402(c), *et seq.*, the value of this project shall be assessed on the “income” basis; and
 - b. Following the expiration of the three-year LERTA, twelve (12) years of Payments in Lieu of Taxes shall be made by Sponsor with the amount of the annual payment to be assessed on the “income” based calculation in the manner described in subparagraph 3.a. above and considering the impact of applicable rent restrictions, affordability requirements, or any other related restrictions prescribed by any applicable Federal or State programs under 72 P.S. § 5020-402(c)(1); but without consideration of tax credits (as required by 72 P.S. § 5020-402(c)(2); and
 - c. Sponsor shall provide all of the Taxing Authorities with copies of its complete, filed, Federal Tax Return, together with a Profit and Loss Statement, by June 30 of each year, for the preceding year; and
 - d. The City of Warren Finance Officer will calculate the PILOT due and will notify the Sponsor by August 30 of the amount due to each Taxing

Authority. Each Taxing Authority will be provided with a copy of the notification; and

- e. The PILOT due shall be paid to each Taxing Authority by September 30 of each year.
 - f. The PILOT shall be pro-rated for any portion of a year during which the Project is operational.
5. Such Payments in Lieu of Taxes shall be allocated amongst the Taxing Authorities in the same proportion that their respective real estate tax millages shall bear to the total of their combined millages for the tax year concerned; and
 6. The within Agreement is made expressly contingent upon the continued funding for, construction, completion, and commencement of operation of the Project as a senior affordable public housing facility; and
 7. The "Whereas" clauses set forth above are adopted as operative provisions of this Agreement; and
 8. This PILOT Agreement may be executed in any number of counterparts all of which, when taken together, shall be but one document, and any party hereto may execute the Agreement by signing any one copy hereof. Any counterpart of this PILOT Agreement, which has attached to it separate signature pages which together contain the signature of all parties, shall for all purposes be deemed a fully executed instrument. A facsimile transmission of an original signature shall be deemed to be an original signature; and
 9. This PILOT Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Venue shall be in the Court of Common Pleas of the 37th Judicial District, Warren County, Pennsylvania; and
 10. The Taxing Authorities' participation in this agreement is conditioned upon the participation of all applicable Taxing Authorities, regardless of whether one or more of the Taxing Authorities has executed this Agreement in counterpart; and
 11. Sponsor reserves the right to appeal any applicable assessment made with respect to the Project, however, any result of the appeal of the assessment shall be applicable only after the term of this PILOT Agreement expires, and shall not change the liability of the Sponsor to pay the agreed upon Payments In Lieu Of Taxes hereunder; and
 12. It is acknowledged and agreed by the parties hereto that Sponsor's payment obligation, during the term of this Agreement, shall not increase, decrease, or otherwise change as a result of any millage rate increase or decrease implemented and/or adopted by any or all of the Taxing Authorities; and

13. This PILOT may not be used by any party hereto in any future proceeding regarding the assessed value of the Project; and
14. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their successors and assigns. However, any transfer of the property and/or improvements located thereon, located at 237 Pennsylvania Avenue West, Warren, Pennsylvania, to any entity that is not affiliated with Sponsor, for any consideration, will automatically terminate this Agreement; and
15. This Agreement contains the complete and entire agreement and understanding of the parties concerning matters contained herein and may not be altered, modified, or changed in any manner except by a writing duly executed by all parties hereto. No statements, promises, or representations have been made by any party to another, or are relied upon, and no consideration has been or is offered or promised, expected or held out, other than as expressly stated in this Agreement.

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IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this PILOT Agreement on the dates indicated below.

ATTEST:

WARREN COUNTY SCHOOL DISTRICT

Printed Name

Donna L. Zariczny, Board President
Date: _____

ATTEST:

COUNTY OF WARREN

Printed Name

Ben Kafferlin, Commissioner, Chair
Date: _____

ATTEST:

CITY OF WARREN

Nancy K. Freenock, City Clerk

Maurice J. Cashman, Mayor
Date: _____