

SPECIAL MEETING
TOWN BOARD OF THE TOWN OF LIBERTY
November 30, 2015 4:00 p.m.

At the Special Meeting of the Town Board of the Town of Liberty held on 11/30/15 at 6:00 p.m. at Town Hall, 120 North Main Street, Liberty, New York, the following Town Board Members were present:

Present:

Supervisor Charlie Barbuti
Councilperson Dean Farrand
Councilperson Russell Reeves
Councilperson Brian McPhillips

Councilperson Thomas Hasbrouck-Absent

Recording Secretary:

Town Clerk Laurie Dutcher

Supervisor Barbuti called the meeting to order at 6:00 p.m.

Golden Park PILOT Agreement

Golden Park Apartments is obligated to obtain a PILOT agreement or tax abatement in conjunction with significant funding from the state of New York to assist in the financing of the significant capital repairs at the property. The hope is to rewrite the current PILOT as similar to the current one as possible.

Summary of the financing

- New York State has committed to fund \$9.99 million to fully renovate Golden Park Apartments from a fund specially designated to preserve affordable housing.
- HUD has committed to enter into a new 20-year rental assistance contract that more than doubles the number of units (approximately 105 of the 126 units) of the project based rental assistance at Golden Park. This contract will have a value of approximately \$800,000 per year or \$16 million over the life of the contract.
- Liberty has not been asked to fund this endeavor beyond the continuance of the basic terms of the existing PILOT, resulting in neither the Town/Village nor the property being incrementally burdened by the PILOT.

Golden Park Apartments will undergo a substantial renovation and the bulk of which will be funded by the almost \$10 million from the state fund. This construction will likely provide work in Liberty and Sullivan County and increase business activity in general.

AGREEMENT FOR PAYMENT IN LIEU OF TAXES (PILOT) BY AND
AMONG THE TOWN OF LIBERTY, GOLDEN PARK APARTMENTS
LLC AND GOLDEN PARK HOUSING DEVELOPMENT FUND
CORPORATION

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the "PILOT Agreement" or "Agreement"), dated December I, 2015, by and among the TOWN OF LIBERTY,

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NEW YORK, a New York municipal corporation, having its principal office located at 120 North Main Street, Liberty, New York 12754 (the "Town") and GOLDEN PARK HOUSING DEVELOPMENT FUND CORPORATION, an Article XI housing development fund company under the New York State Private Housing Finance Law and a New York not-for-profit corporation, having its principal office located at 4-10 Golden Park Lane, Liberty, New York (the "HDFC"), which HDFC will hold title to the Property (as hereinafter defined) for the benefit of GOLDEN PARK APARTMENTS LLC, a Massachusetts limited liability company, having its principal office located at 135 Berkeley Street, West Newton, MA 02465 (the "LLC").

WHEREAS, the HDFC is, or will become, the bare legal or record owner, and the LLC is, or will become, the beneficial and equitable owner, of a ten-acre parcel of land (Part of SBL No. 124-1-3) located at 4-10 Golden Park Lane, Village of Liberty, New York, County of Sullivan, State of New York (the "Land"), commonly known as Golden Park Apartments (the "Property"); and

WHEREAS, the HDFC has been formed for the purpose of providing residential rental accommodations for senior citizens and income-restricted persons; and

WHEREAS, the HDFC has or will acquire fee title to the Land, as nominee for the LLC, and has or will convey its equitable and beneficial interests in the Land to the LLC in furtherance of the development of the Project; and

WHEREAS, the LLC will develop, own, construct, maintain and operate a housing project of up to 126 affordable dwelling units for senior citizens and income-restricted persons at the Property (the "Project"); and

WHEREAS, the HDFC's and the LLC's plan for the use of the Property constitutes a "housing project" as that term is defined in the Private Housing Finance Law of the State of New York ("PHFL"); and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL and Section 577 of the PHFL authorizes the Members of the Town Board to exempt the Project from real property taxes; and

WHEREAS, pursuant to Section 577 of the PHFL, the local legislative body of a municipality may exempt the real property of a housing project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements and special ad valorem districts, to the extent of all or a part of the value of the property included in the completed Project; and

WHEREAS, the Board Members of the Town, by resolution adopted November 30, 2015, approved and authorized the authorized Town representative's execution of this Agreement and any amendments;

NOW, THEREFORE, it is agreed as follows:

1. Pursuant to Section 577 of the PHFL, the Town hereby exempts from local and municipal taxes, other than assessments for local improvements and special ad valorem districts (e.g., fire district, library district, water district and sewer district), one hundred percent (100%) of the value of the Property, both the Land and any improvements included in the Project at the time of its acquisition by the HDFC. "Local and Municipal Taxes" shall mean any and all real estate taxes levied by any affected Taxing Jurisdiction (as defined in Subdivision 1(b) of Section 577 of the PHFL which has jurisdiction over the Project) and intending to bind the applicable Taxing Jurisdictions to the fullest extent provided under Section 577 of the PHFL.

2. This tax exemption will commence on the date of the HDFC's acquisition of the fee title interest in the Property and shall continue for a period of thirty (30) years following the date of the HDFC's acquisition of the fee title interest on the Property (the "Term"), unless terminated earlier as a result of an Event of Default as provided in Section 6 of this Agreement. This Agreement shall not limit or restrict the HDFC's or LLC's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement.

3. So long as the exemption hereunder continues, the LLC shall make annual payments in lieu of taxes ("PILOT") in the initial amount of Three Hundred Forty and 00/100 Dollars (\$340.00) per dwelling unit (pro-rated for the year in which the HDFC acquires the fee title interest on the Property), on or before January 31", which amount shall increase two percent (2%) annually, but in no event greater than any rent increase approved by New York Homes and Community Renewal, U.S. Department of Housing and Urban Development or any other applicable governmental authority regulating Project rentals, with the resulting amount due the following January 31", for a period of thirty (30) years. The LLC shall deliver to the Town Tax Assessor before March 1" of each year during the Term a statement from the chief financial officer or other officer of the LLC's managing member setting forth any rent increase approved since the immediately preceding March 1" by New York Homes and Community Renewal, U.S. Department of Housing and Urban Development or any other applicable governmental authority regulating Project Rentals. The aforementioned PILOT payments shall cover all Local and Municipal Taxes, other than assessments for local improvements and special ad valorem districts, owed in connection with the Property and the Project. During the term of this Agreement, the LLC shall continue to pay all special ad valorem levies and special assessments levied against the Property and the Project (collectively, "Special District Charges") for the Solid Waste Fee and by the Liberty Joint Fire District and Ferndale Water District. All other newly created Special District Charges that may be listed on the annual January Town and County, Village, and/or School tax bill or which may be billed separately to the Property or the Project shall be deducted from the PILOT payments due in the same year. Should the assessment for the Ferndale Water District expire, the PILOT shall increase by \$104.76 per dwelling unit (pro-rated for the date upon which such assessment expires). If additional units in excess of the aforementioned one hundred twenty-six (126) residential units or other improvements are made to the Property, the PILOT payment amount shall increase on a per unit basis consistent with the terms

of this Agreement. So long as the tax exemption remains in effect, tenant rental charges shall not exceed the maximum established or allowed by law, rule or regulation, and the Property shall be operated in conformance with the provisions of Article XI of PHFL.

4. The tax exemption provided by this Agreement will continue for the term described above provided there is no uncured event of default under Section 6 hereof and provided further that (a) the Property continues to be used as housing facilities for senior citizens and income-restricted individuals, and (b) either of the following occur (i) the HDFC and/or the LLC own and operate the Property in conformance with Article XI of the PHFL; or (ii) in the event an action is brought to foreclose a mortgage upon the Property, and the legal and beneficial interest in the Property shall be acquired at the foreclosure sale or from the mortgagee, or by a conveyance in lieu of such sale, by a housing development fund corporation organized pursuant to Article XI of the PHFL, or by the Federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become, subject to the supervision of the superintendent of banks or the superintendent of insurance, such successor in interest shall operate the Project in conformance with Article XI of the PHFL.

5. The failure to make the required payment will be treated as failure to make payment of taxes and will be governed by the same provisions of law as apply to the failure to make payment of taxes, including, but not limited to, enforcement and collection of taxes to the extent permitted by law. In the event that the Town commences a proceeding to enforce the provisions of this Agreement, then, in addition to the remedies which the Town may be entitled, the Town shall have the right to an award of reasonable attorney fees.

6. The following shall constitute an event of default under this Agreement ("Event of Default"):

- (a) The HDFC's and/or LLC's failure to pay in full any PILOT payment due under this Agreement within thirty (30) days of receipt of a written notice from the Town indicating the amount that is past due; or
- (b) The HDFC's and/or LLC's failure to comply with, or to perform according to any provisions of this Agreement, if such failure continues in whole or in part for more than forty-five (45) days after the date written notice of such failure is received by the HDFC or LLC from the Town.

7. Upon the Event of Default, the Town may exercise any and all rights or remedies permitted by law. Without limiting the generality of the foregoing, and in addition to all other rights and remedies, the Town shall also have the right upon an Event of Default, to terminate this Agreement and the exemption granted hereunder sixty (60) days from the date of the HDFC's or LLC's receipt of the initial notice of the Event of Default. The remedies granted to the Town under this Agreement, or by law, are cumulative. The exercise of one right or remedy by the Town shall not impair its right to exercise any other right or remedy. No failure by the Town to insist upon the strict performance of any covenant, agreement, term, or condition of this Agreement, or to exercise any right or remedy hereunder or thereunder upon an Event of Default by the HDFC or LLC, shall constitute a waiver of any such Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement to be performed by the HDFC or

LLC, and no Event of Default with respect thereto, shall be waived, altered, modified, or terminated except by written instrument executed by the Town. No waiver of any Event of Default shall otherwise affect or alter this Agreement, but each and every covenant, agreement, term, and condition hereunder or thereunder shall continue in full force and effect with respect to any other then existing or subsequent Event of Default. All rights and remedies of the Town under this Agreement shall survive the termination of this Agreement or any exemption granted hereunder as a result of an Event of Default. Notwithstanding the foregoing provisions contained in this paragraph, HDFC and LLC shall have the right to appear in any action brought against it seeking payment as aforesaid, to the extent that HDFC and LLC have the right to raise as a defense any or all of the following defenses: the illegality of the tax or taxes imposed. Furthermore, in the event this Agreement is terminated by the Town, the HDFC and LLC shall be entitled to a credit towards the amount of Town/Village/County and School taxes that the LLC is required to pay for the remaining portion of the applicable tax year after the effective date of the termination. The credit shall be equal to that portion of the amount previously paid pursuant to this Agreement that is allocable to the period of time after this Agreement is terminated. The provisions of this Section shall survive the termination or expiration of this Agreement.

8. Any special district taxes levied by any special district with respect to the Property for any year during the Term shall be based upon the assessed value of the Property determined in accordance with the income approach set forth in Section 581-a of the RPTL, if applicable; and in existence at that time, or any successor provision thereto. The LLC shall deliver to the Town Tax Assessor before March 1st of each year during the Term the LLC's most recent financial statement, independent auditor's report, rent roll, and any other documentation which may be required pursuant to Section 581-a of the RPTL and regulations promulgated thereunder, if applicable.

9. The HDFC and LLC shall receive advance notice in the same manner as any other taxpayer for any change in assessment relating to the Property, and the HDFC and LLC shall be entitled to protest, administratively and judicially any assessment placed on the Property irrespective of its exempt status. The HDFC and LLC shall in all respects have the same administrative and legal rights and remedies with respect to the amounts it hereby obligates itself to pay in lieu of taxes, including judicial appeal thereof, as if it were a property owner not exempt from taxation.

10. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the applicable address stated above (or such other address as the party to whom notice is given shall have specified to the party giving notice) by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery.

11. This Agreement shall inure to the benefit of and shall be binding upon the Town, the LLC and the HDFC and their permitted respective successors and assigns, including the successors in interest of the LLC and the HDFC. There shall be no assignment of this Agreement by the HDFC or LLC except with the prior written consent of the Town, which consent shall not be unreasonably withheld.

12. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.

13. No waiver or modification of this Agreement or any covenant, condition or limitation therein shall be valid unless in writing and duly executed by the individual party to be charged therewith; and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties hereto arising out of or affecting this Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provisions of this Section may be waived as herein set forth.

14. This Agreement and the performance thereunder, and all actions and special proceedings relating hereto shall be construed in accordance with, under, and pursuant to the laws of the State of New York.

15. This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.

16. This Agreement constitutes the entire agreement of the parties relating to payments in lieu of taxes with respect to the above-described Property and supersedes all prior contracts, or agreements, whether oral or written, with respect thereto.

17. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement, (i) has been duly authorized and does not require any other consent or approval, (ii) does not violate any article, by-law or organizational document or any law, rule, regulation, order, writ, judgment or decree by which it is bound, and (iii) will not result in or constitute a default under any indenture, credit agreement, or any other agreement or instrument to which any of them is a party. Each party represents that this Agreement shall constitute the legal, valid and binding agreement of the parties enforceable in accordance with its terms.

ADJOURN

On a motion by Supervisor Charles Barbuti, seconded by Councilperson Dean Farrand, the Town Board does hereby adjourn the meeting at 9:05 p.m.

Laurie Dutcher, Town Clerk

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