

**AGREEMENT FOR PAYMENT IN LIEU OF TAXES
BETWEEN AND AMONG
THE CITY OF BEACON, NEW YORK, WEST END LOFTS HOUSING
DEVELOPMENT FUND COMPANY, INC. AND
WEST END LOFTS LIMITED PARTNERSHIP**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the “PILOT Agreement” or “Agreement”), dated as of the ____ day of March, 2018, between and among the **CITY OF BEACON, NEW YORK**, a municipal corporation organized and existing under the laws of the State of New York, having its principal office located at Beacon City Hall, 1 Municipal Plaza, Beacon, New York 12508 (the “City”), **WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.**, a New York not-for-profit corporation and entity organized pursuant to Article XI of the Private Housing Finance Law of the State of New York, having its principal place of business at c/o Hudson River Housing, Inc., 313 Mill Street, Poughkeepsie, New York 12601 (the “HDFC”), which HDFC will hold title to the Property (as hereinafter defined) for the benefit of **WEST END LOFTS LIMITED PARTNERSHIP**, a New York limited partnership, having its principal office located at c/o The Kearney Realty & Development Group Inc., 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the “Partnership”).

WHEREAS, the HDFC is the bare legal or record owner, and the Partnership is the beneficial and equitable owner, of certain real property located at 1117-1163 Wolcott Avenue, City of Beacon, County of Dutchess, and State of New York more particularly described in Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, the Property consists of that tax parcel to be created by way of a certain subdivision of lands within the City of Beacon, and identified as “Proposed Lot 1” on the map entitled “Preliminary Plat for West End Lofts” dated January 30, 2017 and last revised January 30, 2018, a copy of which (in reduced size format) is attached hereto and incorporated herein as Exhibit B;

WHEREAS, the HDFC is a corporation established pursuant to Section 402 of the Not-For-Profit Corporation Law and Article XI of the Private Housing Finance Law (“PHFL”); and

WHEREAS, the HDFC is the co-general partner of the Partnership; and

WHEREAS, the HDFC and the Partnership have each been formed for the purpose of providing residential rental accommodations for persons of low-income; and

WHEREAS, the Partnership will develop, own, construct, maintain and operate a housing project for persons of low income at the Property (the “Project”); and

WHEREAS, the HDFC’s and the Partnership’s plan for the use of the Property constitutes a “housing project” as that term is defined in the PHFL; and

WHEREAS, the HDFC is a “housing development fund company” as the term is defined in Section 572 of the PHFL; 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, to the extent of all or a part of the value of the property included in a completed project; and

WHEREAS, the City Council of the City of Beacon, New York (the “City Council”), being the local legislative body of the City, by Resolution No. ____ of 2018 duly adopted on March __, 2018, exempted the Property from real property taxes, as authorized under Section 577 of the PHFL, and further approved and authorized the execution of this PILOT Agreement;

NOW, THEREFORE, it is agreed as follows:

1. Pursuant to Section 577 of the PHFL and Resolution No. ____ of 2018 adopted by the City Council on March __, 2018, the City exempts from local and municipal taxes, other than assessments for local improvements, one hundred percent (100%) of the value of the Property, including both land and improvements. “Local and Municipal Taxes” shall mean any and all real estate taxes that may be levied by the County of Dutchess (the “County”), the City, the Beacon City School District (the “School District”) and/or any other taxing jurisdiction (collectively the “Taxing Jurisdictions”) upon the Property, other than as specified in Paragraph “2” below.

2. The tax exemption granted under Resolution No. ____ of 2018 and under this PILOT Agreement shall remain in effect for a period of thirty-two (32) years from date of the HDFC’s acquisition of the Property. This Agreement shall not limit or restrict the HDFC’s or Partnership’s right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement. The parties understand that the exemption extended pursuant to Section 577 of the PHFL and this Agreement does not include an exemption from special assessments and/or special ad valorem levies. During the period of this Agreement, the Partnership shall pay any service charges, special ad valorem levies, special assessments and improvement district charges or similar tax equivalents which are or would be levied upon or with respect to the Property, as improved by the Project, by the Taxing Jurisdictions or any other taxing authority.

3. So long as the exemption remains in effect, the Partnership shall make annual payments in lieu of taxes (“PILOT”) in the amount specified and in accordance with the terms and provisions of this Agreement. The annual PILOT shall be applicable to a calendar year period (January 1st to December 31st), and shall be tendered in arrears in the following calendar year as specified in Paragraph “4” below. The first PILOT shall be due in the calendar year following the year in which a Certificate of Occupancy (or the equivalent thereof) is issued by the City authorizing the use and occupancy of the Project.

4. The annual PILOT shall be tendered by the Partnership to the Director of Finance of the City of Beacon (the “Finance Director”), or his or her designee, within thirty (30) days of the Partnership’s receipt of a PILOT bill to be issued to the Partnership on an annual basis by the City. The annual PILOT bill shall be issued by the City on or after March 1st of each calendar year during the term of this Agreement in which a PILOT is due and owing. Payments shall be mailed via First Class mail through the United States Postal Service or personally delivered to

the City of Beacon, Attention Director of Finance, 1 Municipal Plaza, Beacon, New York 12508, or such other address as the City may specify in writing.

5. The Finance Director shall, within sixty (60) days of receipt of the PILOT proceeds, distribute the PILOT proceeds to the Taxing Jurisdictions that could otherwise levy real property taxes upon the Property, but for the exemption. The Finance Director shall distribute the PILOT proceeds in due proportion to the amount of real property taxes that would have been levied by each of the Taxing Jurisdictions upon the Property in the year the PILOT proceeds are tendered. As an example of this apportionment, if a PILOT is tendered on April 1, 2020, it shall be proportionally allocated among the Taxing Jurisdictions based upon the tax rate applied in the School District's levy of 2019-20 school taxes and the City and County's levy of 2020 City and County taxes.

6. The initial PILOT to be paid by the Partnership shall be in the amount of One Hundred Seventy Thousand and 00/100 Dollars (\$170,000.00). The first PILOT tendered by the Partnership shall be prorated based upon the number of months in the prior calendar year in which the Certificate of Occupancy (or the equivalent thereof) authorizing use and occupancy of the Project was in effect (as an example, if the Certificate of Occupancy is issued in October, the first PILOT shall be prorated on a one-quarter basis to account for the three calendar months [October, November and December] in which the Certificate of Occupancy was in effect). The PILOT shall thereafter increase annually at the same percentage rate of increase, if any, in the annual cumulative rent attributable to the Project. Cumulative rent shall mean gross rental income that may be obtained from the Project, assuming one-hundred (100%) occupancy, without deduction for vacancy, credit loss or expenses attributable to the operation of the Project.

7. For purposes of ascertaining PILOT increases, if any, the Partnership shall, on or before February 1st of each calendar year following submission of the first PILOT, provide to the Finance Director, or his or her designee, an annual rent roll for the Project for the preceding calendar year (January 1st to December 31st) specifying the rent(s) charged for units comprising the Project during this time period. The first such rent roll shall be submitted on February 1st of the year following the first PILOT made by the Partnership in the amount of \$170,000.00 (or as may be prorated under Paragraph "6" above). Upon receipt of this rent roll, the Finance Director shall compute the percentage increase, if any, in the annual cumulative rent attributable to the Project. This percentage increase, if any, shall then determine the amount of the annual PILOT to be billed to and paid by the Partnership. Any increase to the annual PILOT shall be set forth in the annual bill to be issued by the City under Paragraph 4" above. The Partnership shall have the same rights to contest any increase and the underlying computation as does a taxpayer contesting an annual assessment.

8. The amount of the PILOT shall never be less than \$170,000.00. In the event of a decrease in the cumulative rent attributable to the Project, the PILOT shall remain in the same amount paid by the Partnership in the preceding year.

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

10. The tax exemption provided by this Agreement will continue for the term described above provided that (a) the Property and Project continue to be used as housing facilities for persons of low-income in accordance with the income and rent limitations attached hereto and incorporated herein as Exhibit C, and (b) any of the following occur (i) the HDFC and the Partnership operate the Property in conformance with Article XI of the PHFL; or (ii) the HDFC assumes sole legal and beneficial ownership of the Property and operates the Property in conformance with Article XI of the PHFL; or (iii) in the event an action is brought to foreclose a mortgage upon the HDFC, and the legal and beneficial interest in the Project 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, such successor in interest shall operate the property in conformance with Article XI of the PHFL.

11. The failure to make any PILOT in accordance with the terms of this Agreement shall be deemed a failure to make payment of real property taxes and will be governed by the same provisions of law as apply to the failure to make payment of such taxes, including but not limited to the enforcement and collection of taxes to the extent permitted by law. This includes the imposition of any additional late payment charge(s) in the full amount permitted by law, as well as the imposition of interest on any unpaid PILOT that shall accrue at the interest rate authorized by law with regard to unpaid real property taxes levied within the City and County.

12. In addition to failure to pay any PILOT when due, HDFC and the Partnership shall be in default of this Agreement in the event of material failure to observe and perform any other covenant, condition of agreement on its part to be observed and performed hereunder, which breach or default is not cured within thirty (30) days of the HDFC and Partnership's receipt of written notice specifying the nature of such breach or default and requesting that it be remedied; provided, however, that if efforts to cure a non-monetary breach are commenced within such thirty (30) day period and are thereafter diligently prosecuted to completion, such period shall be extended for a period of time not to exceed three (3) months; or in the event any warranty, representation or other statement by or on behalf of HDFC or the Partnership contained in this Agreement shall prove to have been false or untrue in any material respect on the date when made or on the effective date of this Agreement. Any notice issued under this Paragraph "12" shall also be issued contemporaneously to CPC Funding SPE 1 LLC, NYS Homes and Community Renewal and Raymond James Tax Credit Funds, Inc., their respective successors and/or assigns, in the manner and at the addresses specified in Paragraph "16" below. Whenever any event of default under this Agreement shall have occurred and be continuing, the City shall have the following remedies: (a) it may terminate this Agreement and exercise all of the rights and remedies available for failure to pay property taxes as and when due had this Agreement not been in effect and/or (b) it may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of HDFC and the Partnership under this Agreement, and the Partnership shall further pay the reasonable fees and disbursements of such attorneys as the City shall engage for the enforcement of performance or observance of any obligation, covenant or agreement on the part of HDFC and the Partnership and all other expenses, costs and disbursements so incurred.

13. No remedy herein conferred reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

14. No delay or omission in exercising any remedy shall impair any such remedy or construed to be a waiver thereof. It shall not be necessary to give any notice other than as expressly required under this Agreement. In the event any provision contained in this Agreement should be breached and thereafter duly waived by the party or parties so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder.

15. It is acknowledged and agreed that the School District and County are third-party beneficiaries of this Agreement and thereby entitled to the rights and benefits of its terms and, accordingly, may enforce the provisions of this Agreement as if they are parties hereto, and obtain the same remedies against the Partnership and HDPC as afforded the City under the terms of this Agreement.

16. All notices and other communications hereunder, with the exception of the annual PILOT bill to be issued under Paragraph "4" above, shall be in writing and shall be sufficiently given when delivered by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery, to the following:

To The City of Beacon, New York:

City Administrator
City of Beacon
Beacon City Hall
1 Municipal Plaza
Beacon, New York 12508

To West End Lofts Housing Development Fund Col, Inc.:

c/o Hudson River Housing, Inc.
313 Mill Street
Poughkeepsie, New York 12601

To West End Lofts Limited Partnership:

c/o The Kearney Realty &. Development Group Inc.
34 Clayton Boulevard, Suite A
Baldwin Place, New York 10505

To CPC Funding SPE 1 LLC:

CPC Funding SPE 1 LLC
28 East 28th Street
New York, New York 10016-7943

To NYS Homes and Community Renewal:

NYS Homes and Community Renewal
38-40 State Street
6th Floor, Hampton Plaza
Albany, New York 12203

To Raymond James Tax Credit Funds, Inc.:

Raymond James Tax Credit Funds, Inc.
535 Madison Avenue, 9th Floor
New York, New York 10022

Notices shall be issued to the successors and/or assigns of any of the above-listed entities, at addresses specified in writing to all parties to this Agreement pursuant to the notice provisions of this Paragraph "16."

17. This Agreement shall inure to the benefit of and shall be binding upon the City, the Partnership and the HDFC and their respective successors and assigns, including the successors in interest of the Partnership and the HDFC. There shall be no assignment of this Agreement except with consent of the other party, which consent shall not be unreasonably withheld, provided that the assignee or its general partner shall be a housing development fund company subject to Article XI of the PHFL, the assignee shall have assumed the obligations of this Agreement in writing reasonably satisfactory to the City, and the assignee shall have provided such financial and other information as shall be reasonably requested by the City in order to assure the proper completion and operation of the housing project and the compliance with the terms of this Agreement and all applicable laws, regulations and covenants.

18. 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.

19. It is acknowledged and agreed that this Agreement is a mutual undertaking of counsel for all parties and, accordingly, to the extent any ambiguity exists with respect to the terms and conditions stated herein, such terms and conditions shall not be automatically construed against any party hereto.

20. 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.

21. 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.

22. This Agreement may only be supplemented, amended or modified upon the mutual agreement of the parties hereto. No such supplement, amendment or modification shall

take effect and be binding except in written form signed by the parties.

23. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement, (i) has been duly authorized by proper action of its governing body and does not require any other consent or approval for the execution thereof by such municipality, (ii) does not violate 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 agreement or instrument to which it is a party. Each such party represents that this Agreement shall constitute the legal, valid and binding agreement of such party enforceable in accordance with its terms.

24. The Partnership and HDFC jointly and severally make the following representations, warranties and covenants:

(i) Each of the HDFC, a “housing development fund company” under Article XI of the PHFL, and the Partnership is organized, validly existing and in good standing under the laws of the State of New York and is authorized under the laws of the State of New York to do business in the State, has the power to enter into this Agreement and to perform the transactions contemplated hereby and its obligations hereunder and by proper action has duly authorized the execution and delivery of this Agreement and the performance of its obligations hereunder, and the execution, delivery and performance of this Agreement does not require any other consent or approval. This Agreement shall constitute the legal, valid and binding agreement of HDFC and the Partnership enforceable in accordance with its terms.

(ii) Neither the Partnership nor HDFC is in default under, or in violation of, any indenture, mortgage, declaration, lien, lease, contract, note, order, judgment, decree or other instrument of any kind to which any of its assets are subject, and the execution, delivery and compliance by the Partnership or HDFC with the terms and conditions of this Agreement do not and will not conflict with or constitute or result in a default by the Partnership or HDFC in any material respect under or violation of, (1) the entity’s organizational documents, (2) any agreement or other instrument to which such entity is a party or by which, to such entity’s knowledge, it is bound, or (3) any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Partnership or HDFC or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(iii) The Partnership has provided to the City true and complete financial information with respect to the Property, including without limitation project costs, financing sources, rents and income limitations.

(iv) The Partnership covenants and agrees to operate the Property in accordance with all applicable rules and regulations of Article XI of the PFHL, including without limitation applicable rent limits and income limits and in accordance with the plan attached hereto as Exhibit C.

(v) The Partnership covenants and agrees to provide to the City any information or documents reasonably requested in writing by the City in order to provide any federal,

state or local entity with information or reports required under any applicable law, rule or regulation.

25. The City shall file a copy of the fully executed Agreement with the City Assessor. The Partnership shall be responsible for taking such actions as may be necessary to ensure that the Property shall be assessed as exempt upon the assessment rolls of the respective Taxing Jurisdictions, including without limitation ensuring that any required exemption form shall be filed with the appropriate officer or officers of each respective Taxing Jurisdiction. Such exemption shall be effective as of the first taxable status date of the applicable Taxing Jurisdiction following the date of this Agreement, provided that the Partnership shall timely file any requisite exemption forms.

26. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the City, the HDFC and the Partnership have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2018

CITY OF BEACON, NEW YORK

By: _____
Name: Hon. Randy Casale
Title: Mayor

DATED: _____, 2018

WEST END LOFTS HOUSING
DEVELOPMENT FUND COMPANY, INC.

By: _____
Name: Christa Hines
Title: Treasurer

DATED: _____, 2018

WEST END LOFTS LIMITED PARTNERSHIP

By: West End Lofts Associates, LLC,
its managing general partner

By: _____
Name: Kenneth Kearney
Title: Manager

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

On the ____ day of _____, in the year 2018, before me personally appeared Randy Casale, 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 person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On the ____ day of _____, in the year 2018, before me personally appeared Christa Hines, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On the ____ day of _____, in the year 2018, before me personally appeared Kenneth Kearney, 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 person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A

[Insert Meters/Bounds Legal Description]

EXHIBIT B

[Insert Reduced Size Preliminary Plat – West End Lofts]

EXHIBIT C

Project Plan: West End Lofts

Property: 1117-1163 Wolcott Avenue

Fifty (50) units of residential, rental restricted income housing, meeting the income limits in accordance with HCR regulations applicable for federal low income housing tax credit (“LIHTC”) and housing trust fund projects, and not exceeding 60% of area median income (“AMI”).

Three (3) units of residential rental low income housing, meeting the income limits in accordance with HCR regulations applicable for state low income housing tax credit (“SLIHTC”) and housing trust fund projects, not exceeding 90% of AMI, which shall initially not exceed 73% of AMI subject to future modification in accordance with applicable law, including the Beacon City Code.

Nineteen (19) units above 90% of residential rental housing pursuant to the Middle Income Housing Program.

One (1) superintendent’s unit.

Subject to the above, with respect to the 50 LIHTC units, rents will be limited to 30% of the percentage of the AMI limit specified by HCR in accordance with LIHTC and SLIHTC program requirements. Income and rent limits will be applicable for the full term of the PILOT Agreement in accordance with the LIHTC and SLIHTC regulatory agreement.