

**AGREEMENT FOR PAYMENT IN LIEU OF TAXES (PILOT)  
BY AND AMONG THE TOWN OF DRYDEN,  
FREESE ROAD APARTMENTS HOUSING DEVELOPMENT FUND CORPORATION  
and FREESE ROAD APARTMENTS, LLC.**

**THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES** (the “Agreement”), dated \_\_\_\_\_, 20\_\_, by and among the **TOWN OF DRYDEN, NEW YORK**, a New York incorporated town, having its principal office located at 93 East Main Street, Dryden, New York 13053 (the “Town”), **FREESE ROAD APARTMENTS HOUSING DEVELOPMENT FUND CORPORATION**, an Article XI New York Private Housing Finance Law corporation and a New York not-for-profit corporation, having its principal office located at 115 West Clinton Street, Ithaca, New York 14850 (the “HDFC”), and **FREESE ROAD APARTMENTS, LLC**, a New York limited liability company, having its principal office located 115 W. Clinton Street, Ithaca, NY 14850 (the “LLC”).

**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 the completed project; and

**WHEREAS**, the Town Board Members of the Town of Dryden, New York, by resolution adopted \_\_\_\_\_, 2024, approved and authorized the Supervisor’s execution of this Agreement;

**NOW, THEREFORE**, it is agreed as follows:

1. Representations and Warranties by HDFC.

(a) The HDFC is or will be the bare legal or record owner, and the LLC is or will be the beneficial and equitable owner, of certain real property located at 9 Freese Road, Town of Dryden, County of Tompkins, State of New York, as more particularly described in Exhibit A attached hereto.

(b) The HDFC is or will be 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 has or will have the power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and by proper action of its board or shareholders has been or will be duly authorized to execute, deliver and perform this Agreement.

(c) The sole member of the HDFC is or will be Ithaca Neighborhood Housing Services, Inc.

(d) The HDFC and the LLC have each been formed for the purpose of providing residential rental accommodations for persons of low-income;

(e) LLC proposes to redevelop the parcels identified in Exhibit A to create 53 new affordable housing units serving households with incomes that range from below 30% AMI to 80% AMI. Such units will be subject to a 50-year regulatory agreement, requiring them to remain affordable for at least that period of time the project to be commonly known as Freese Road Apartments (the “Project”). In addition, six affordable for-sale homes will be constructed at the site.

(f) Prior to the tax exemption provided by this Agreement taking effect, HDFC and LLC will take such actions as necessary to combine the area of land identified in Exhibit A serving and benefiting the 53 new affordable housing units into one tax parcel (the “Property”), and to exclude from that tax parcel the area of land serving and benefiting the six affordable homes.

(g) The HDFC has or will have fee title to the Property, as nominee for the LLC, and has or will convey its equitable and beneficial interests in the Property to the LLC in furtherance of the development of the Project.

(h) HDFC’s and the LLC’s plan for the use of the Property constitutes a “housing project” as that term is defined in the PHFL.

(i) The HDFC is a “housing development fund company” as the term is defined in Section 572 of the PHFL.

(j) The HDFC is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its certificate of incorporation or by-laws, or any other restriction, law, rule, regulation or order of any court of other agency or Town of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the HDFC is a party or by which the HDFC or any of its property is bound, and neither the HDFC’s entering into this Agreement nor the HDFC’s discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in material conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the HDFC under the terms of any of the foregoing.

(k) No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public entity on the part of the HDFC is required as a condition to the execution, delivery or performance of this Agreement by the HDFC or as a condition to the validity of this Agreement, except as otherwise disclosed in Schedule 1(j) hereto.

(l) No liens have been attached or filed against the HDFC or the assets of the HDFC in favor of any governmental or private entity, other than liens that may encumber the interest of the HDFC in the Project, and no judgments have been entered against the HDFC which remain unsatisfied or outstanding.

(m) This Agreement is a valid and binding obligation of the HDFC, enforceable against the HDFC in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting creditor's rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(n) There is no pending or, to the knowledge of the HDFC threatened in writing, action, suit, proceeding or claim affecting the HDFC, or any of its assets before any court, governmental agency or arbitrator which may materially adversely affect the assets, properties, condition (financial or otherwise) or operations of the HDFC.

(o) There are no criminal actions, suits, demands, claims, hearings, or notices, notices of violation, potential liabilities, investigations, or proceedings pending or threatened against the HDFC or assets of the HDFC.

(p) The HDFC is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any agreement, instrument or contract to which it is a party or by which the HDFC or any of its assets or properties are bound.

(q) The HDFC has filed or caused to be filed all federal, state and local tax and similar returns which are required to be filed, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it in writing, to the extent that such taxes have become due. The HDFC has no actual knowledge of any claims for past due taxes upon its assets or properties, now owed, or as will be hereafter acquired.

(r) This Agreement does not contain any untrue statement of a material fact or omit any material fact, which under the circumstances under which it was made, was necessary in order to make the statements contained herein not misleading.

(s) Other than for a breach of its representations expressly made hereunder, the HDFC understands, agrees, and acknowledges that the Town's obligations hereunder shall be non-recourse to it and the HDFC shall have no rights, remedies, or claims against the Town should this Agreement or any document ancillary hereto be found invalid, improper, null, void, or ineffective for the purposes stated herein.

2. Pursuant to Section 577 of the PHFL, the Town hereby exempts from local and municipal taxes, other than assessments for local improvements, one hundred percent (100%) of the value of the Property, including both the land and the improvements included in the Project. "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 Property and intending to bind the applicable Taxing Jurisdictions to the fullest extent provided under Section 577 of the PHFL (collectively, the "Taxing Jurisdictions").

3. This tax exemption will take effect on first of January immediately following the date of the Project's completion, and shall thereafter continue for a period of thirty (30) years, unless terminated earlier as a result of an Event of Default as provided in Section 6 in this Agreement. This Agreement shall not limit or restrict the HDFC's or the LLC's right to apply for or obtain any other tax exemption to which the Property might be entitled upon the expiration of this Agreement, nor would it prevent the Property to be assessed under RPTL 581-a.

4. (a) So long as the exemption hereunder continues, the Partnership shall make annual payments in lieu of taxes ("PILOT") in the initial annual amount of Thirty-One Thousand Three Hundred Thirteen and 00/100 Dollars (\$31,313.00), and subsequent amounts as determined pursuant to subparagraph (c) hereof, on or before June 30<sup>th</sup> each year during the period the Project is exempt, which PILOT payments shall cover all Local and Municipal Taxes, other than assessments for local improvements, owed in connection with the Property and the Project, . Such payments shall be shared by the Taxing Jurisdictions on the same basis as property taxes would have been shared if the Property and the Project were not exempt. In addition to being an Event of Default (as defined herein), the failure to make the required payment will be treated as failure to make payment of taxes, which 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. Such remedy shall be in addition to the rights of the Town pursuant to this Agreement.

(b) If additional units in excess of the aforementioned fifty-three (53) 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.

(c) Notwithstanding anything to the contrary contained herein, the HDFC and LLC acknowledge and agree that the annual PILOT payments shall be the greater of the amount specified in subparagraph (a) hereof, or twelve percent (12%) of the net operating income for the Project.

5. The tax exemption provided by this Agreement will continue for the term described above, but also provided that the Property and the Project continue to be used as affordable housing facilities people of low income and (i) the HDFC and the LLC own and operate the Property and the Project in conformance with Article XI of the PHFL; or (ii) the HDFC assumes sole legal and beneficial ownership of the Property and the Project and operates the Project in conformance with Article XI of the PHFL; or (iii) in the event an action is brought to foreclose a mortgage upon the Property and the legal and beneficial interest in the Property and 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, and such successor in interest operates the Project in conformance with Article XI of the PHFL.

6. (a) Events of Default. Any one or more of the following events shall constitute an event of default under this Agreement, and the terms "Event of Default" and "default" shall mean, whenever they are used in this Agreement, any one more of the following events:

i. Failure of the HDFC and/or LLC to pay within thirty (30) days after notice that same is overdue any amount due and payable by either the HDFC or LLC pursuant to this Agreement;

ii. Failure of the HDFC and/ or LLC to observe and perform any other (other than as referred to in subparagraph (i) above) material covenant, condition or agreement on its part to be observed and performed hereunder or under any document ancillary hereto (including, but not limited to, any approvals by the Town concerning local land use and building), and continuance of such failure for a period of thirty (30) days after written notice to the HDFC and LLC specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period, and if the HDFC or LLC shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the HDFC or LLC shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default;

iii. Any warranty, representation or other statement by or on behalf of the HDFC contained in this Agreement or in any document ancillary hereto shall have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement; or

iv. The occurrence and continuance beyond any applicable notice or grace period of a default under any other agreement or contract (now or hereafter in place) by and between the LLC and the Town.

v. In addition to the HDFC and the LLC, copies of any notice of an Event of Default sent by the Town shall be sent to [Project Lender, [ADDRESS]], [Project Investor, ADDRESS]. Project Lender and Project Investor shall each have the right, but not the obligation, to cure any Event of Default.

(b) Remedies on default.

i. General. Whenever any Event of Default shall have occurred with respect to this Agreement, the Town 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, agreement and covenants of the LLC under this Agreement.

ii. Termination. Upon the occurrence and continuation of any Event of Default (beyond any applicable cure or grace provision), the Town may terminate this Agreement, such termination to be effective as of the date of initial default notwithstanding any applicable grace or cure provision, and the Property shall return to the tax rolls as of such initial default date.

iii. Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(c) Payment of attorneys' fees and expenses. If the HDFC should default in performing any of its obligations, covenants or agreements under this Agreement and the Town should employ attorneys or incur other expenses in connection with the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation,

covenant or agreement on the part of the HDFC herein contained, the HDFC agrees that it will, on demand therefor, pay to the Town, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other reasonable expenses, costs and disbursements so incurred, whether or not an action is commenced.

(d) Remedies, waiver and notice.

i. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Town 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.

ii. Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

iii. Notice Not Required. In order to entitle the Town to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give notice, other than such notice required in this Agreement or the Enabling Statute.

iv. No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party 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. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

7. 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.

8. This Agreement shall inure to the benefit of and shall be binding upon the Town, the HDFC and the LLC and their respective successors and assigns, including the successors in interest of the HDFC and the LLC. There shall be no assignment of this Agreement by the HDFC or the LLC except with prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed or pursuant to a foreclosure where the Project continues to operate as affordable housing pursuant to Paragraph 5 above.

9. 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.

10. 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.

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

12. 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.

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

14. 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.

15. HDFC agrees that any suit for the enforcement of this Agreement shall be brought in the Supreme Court, Tompkins County, New York, and consents to the jurisdiction of such court. HDFC waives any objection that it may now or hereafter have to the venue of any such suit or any such court, or that such suit or any such court or that such suit is brought in an inconvenient forum.

*Remainder of page intentionally left blank.*

IN WITNESS WHEREOF, the Town, the HDFC and the LLC 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.

**TOWN OF DRYDEN, NEW YORK**

DATED: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Name: Jason Leifer

Title: Supervisor

**FREESE ROAD APARTMENTS HOUSING DEVELOPMENT FUND CORPORATION**

DATED: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Name:

Title:

**FREESE ROAD APARTMENTS, LLC**

DATED: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Name:

Title:



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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared JASON LEIFER, 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 as Town Supervisor, 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 TOMPKINS )       SS.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, 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 as Executive Director, and that by his signatures on the instrument, the individual, or persons upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT A