



City of Bloomington Common Council

Legislative Packet - Addendum

Issued on Wednesday, 02 November 2022

Wednesday, 02 November 2022

Regular Session at 6:30 pm

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this “PILOT Agreement”) is entered into as of this ____ day of _____, 2022 (the “Effective Date”), by and among the CITY OF BLOOMINGTON, INDIANA, (the “City”), and COUNTRY VIEW HOUSING, LP, and its permitted successors and assigns (“Owner”).

RECITALS

WHEREAS, Owner owns certain real estate in Bloomington, Indiana, located at 2500 S. Rockport Road, Bloomington, Indiana, and identified as Parcel Number 53-08-08-303-117.000-009 (the “Real Estate”), and upon which Owner desires to rehabilitate a 206-unit affordable apartment community (collectively with the Real Estate, the “Project”), which Owner has represented will be owned and operated as an affordable housing facility pursuant to the federal low income housing tax credit program under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”) and the applicable State of Indiana Qualified Allocation Plan; and

WHEREAS, pursuant to Indiana Code (“IC”) 6-1.1-10-16.7, Owner will be exempt from the requirement to pay property taxes on real property included in the Project if the following requirements are satisfied: (1) the improvements on the real property were constructed, rehabilitated, or acquired for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under 26 U.S.C. 42; (2) the real property is subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana Housing and Community Development Authority; and (3) the owner of the property has entered into an agreement to make payments in lieu of taxes under IC 36-1-8-14.3;

WHEREAS, the Owner anticipates that the improvements on the Real Estate will be rehabilitated utilizing the federal low-income housing tax credit program under 26 U.S.C. 42 and furthermore that the Project will be subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana Housing and Community Development Authority;

WHEREAS, this Agreement has been drafted to comply with the requirements under IC 36-1-8-14.3 (the “PILOT Statute”);

WHEREAS, the City represents that it has or will undertake all necessary and appropriate actions contained within IC 36-1-8-14.3 to ensure this PILOT Agreement satisfies all necessary requirements of the PILOT Statute so as to permit the Owner to successfully obtain property tax exemption under IC 6-1.1-10-16.7;

WHEREAS, Owner represents that it has timely filed or will timely file its application (the “Property Tax Exemption Application”) with the Monroe County Assessor requesting an exemption pursuant to IC 6-1.1-10-16.7, from its obligation to pay real property taxes and that it will timely file any applications to renew any exemption if required by law to do so; and

WHEREAS, Owner has agreed (i) to make payments in lieu of taxes to the City; (ii) and ensure the Project is properly maintained; and

WHEREAS, City and Owner have agreed that, if the real property contained on Real Estate becomes fully exempt from the payment of property taxes under IC 6-1.1-10-16.7, Owner will make payments to the City pursuant to the terms of this PILOT Agreement; and

NOW, THEREFORE, in consideration of the foregoing premises, mutual covenants and the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

Section 1. Payments in Lieu of Taxes.

Section 1.1. (a) Owner represents and warrants that it has or will undertake all appropriate action for the real property of the Real Estate to be exempt under IC 6-1.1-10-16.7, and during the term of this Agreement, Owner covenants and agrees it shall at all times comply with the requirements of IC 6-1.1-10-16.7, as applicable to Owner and the Project.

(b) Owner agrees to maintain the Project as an affordable housing facility consisting of a 206-unit affordable apartment community.

(c) Owner agrees to maintain a clean premises in accordance with applicable local, state, and federal codes, rules, and regulations at the Project.

(d) Owner represents and warrants that an extended use agreement with Indiana Housing and Community Development Authority will be entered into and recorded requiring the Project to provide affordable housing for a period of thirty (30) years. Owner further represents and warrants that the Owner's General Partner is owned and controlled by Gene B. Glick Housing Foundation, Inc. (the "Housing Foundation"), which is exempt under Code Section 501(c)(3), and to further its charitable purpose, the Housing Foundation needs to ensure the Project is operated as an affordable housing project as further detailed in Revenue Procedure 96-32 as published by the Internal Revenue Service for as long as the Housing Foundation owns and controls the Owner's General Partner.

(e) Owner acknowledges that this PILOT Agreement does not confer any property tax exemption on the Project and that in order to obtain any such property tax exemption or partial exemption, Owner must timely file its Property Tax Exemption Application, including renewal applications, if any are required, with the Monroe County Assessor requesting an exemption pursuant to IC 6-1.1-10-16.7 from Owner's obligation to pay all or a portion of its property taxes on the Project. The City agrees to use best efforts to assist the Owner in ensuring the real property at the Project is fully exempt from property tax if the Owner has satisfied all requirements to obtain exemption under IC 6-1.1-10-16.7.

Section 1.2. Owner shall annually pay an amount equal to \$61,203.51 (the "**Base Amount**") in accordance with **Section 1.4** for each assessment year after the closing of the Project, which is anticipated to be in the fourth quarter of 2022. Notwithstanding the foregoing and pursuant to IC 36-1-8-14.3(f)(3), to the extent that the amount of real property taxes that would have been received by the City for the Project had the Project not been exempt from property tax pursuant to IC 6-1.1-10-16.7 is less than the Base Amount, then the Base Amount shall be reduced for the

applicable assessment year to the amount that would have been received by the City had the Project not been exempt from real property tax.

Section 1.3. The payments referenced under Section 1.2 shall each be referred to as a “PILOT Payment.” The PILOT Payment shall be paid in lieu of property taxes for the tax year in question that would have been payable by Owner if Owner was a non-exempt taxpayer.

If Owner fails to satisfy the requirements of Section 1.1 and/or Section 1.4 (a “Noncompliance Event”), Owner shall pay to the City an additional ten percent (10%) of the PILOT Payment due and payable for the applicable year (the “Supplemental Payment”) no later than December 31st in the calendar year in which the Noncompliance Event occurs. Owner shall only be liable for the Supplemental Payment once per year for all Noncompliance Events.

The PILOT Payment and Supplemental Payment shall only become due if all the real property at the Project has been exempt from property tax under IC 6-1.1-10-17. To the extent that the real property at the Project is not fully exempt in any year of the Payment Period, the Owner shall have no obligation to make the PILOT Payment or Supplemental Payment for such year.

Section 1.4. The annual PILOT Payment shall be payable in two equal installments due and payable on or before May 10th and November 10th of each successive calendar year following the applicable assessment date, commencing with the first semi-annual installment due and payable on or before the first May 10th after the requirements of Section 1.2 are satisfied (each an “In Lieu of Payment”) and continuing for thirty (30) years thereafter (the “Payment Period”). For purposes of clarity and avoidance of doubt, the Project is anticipated to close in the fourth quarter of 2022, and therefore under such circumstances, the PILOT Payment would first be due for the January 1, 2023 Assessment Year and accordingly the first In Lieu of Payment would be due and payable on or before May 10, 2024.

Section 1.5. Owner hereby reserves the right to contest and to appeal the amount of any tax assessment of the Project. Any such challenge will not affect the timely payment of the annual In Lieu of Amount described in Section 1.2.

Section 1.6. Owner shall be liable for prompt payment of all In Lieu of Payments when due. Owner shall be liable for all penalties, costs and expenses imposed under IC 6.1.1-22-1 *et seq.* and IC 6-1.1-37-1 *et seq.* or any statute which amends or replaces them for delinquent In Lieu of Payments.

Section 2. Recording of PILOT.

Section 2.1. This PILOT Agreement may be recorded with the appropriate office in Monroe County, Indiana, to preserve and protect fully the rights of the City with respect to the Owner’s obligation to pay each In Lieu of Payment during the Payment Period and all subsequent penalties, interest and costs resulting from any delinquency related thereto.

Section 3. Termination.

Section 3.1. This PILOT Agreement shall automatically terminate, by no action of the parties, and shall be of no force or effect between or among the parties upon the expiration of the Payment Period and the remittance of all In Lieu of Payments due and payable pursuant to Section 1.3 hereof. Notwithstanding the foregoing, the City and Owner may mutually agree to extend this PILOT Agreement prior to the expiration of the Payment Period. Furthermore, the Owner may terminate this PILOT Agreement to the extent that the real property at the Project is not fully exempt in any year of the Payment Period.

Section 3.2. Upon conveyance of Owner's title to the Project to any party which meets the requirements of IC 6-1.1-10-16.7, the PILOT Agreement shall remain in full force and effect. The City acknowledges and agrees the Owner may assign this PILOT Agreement and the obligations thereunder as a part of the sale of the Project. The Owner's obligation to pay In Lieu of Payments and Supplemental Payments shall terminate upon Owner's conveyance of its title to the Project. Upon conveyance of fee title to the Project to any other entity that does not meet the requirements of IC 6-1.1-10-16.7, this PILOT Agreement shall become null and void and of no further force or effect; provided, however, Owner shall remain obligated for payment of the applicable pro rata amount of the In Lieu of Payments with respect to the Project up to the date when a purchaser either assumes the obligations hereunder or the real property is no longer exempt under IC 6-1.1-10-16.7.

Section 3.3. In the event the City determines that Owner has failed to satisfy the requirements of Section 1.1 and/or Section 1.4, the City shall notify Owner in writing of such default. Owner shall have sixty (60) days from the effective date of the notice to cure the reason for default (the "Cure Period"). The City may in its sole discretion elect to extend the Cure Period. Following the Cure Period, this PILOT Agreement shall automatically terminate upon written notice from the City to the Owner that such default has not been cured within the Cure Period.

Section 3.4. The parties hereto may mutually agree to terminate this PILOT Agreement. Such termination agreement shall be in writing and executed by all parties hereto. Upon mutual termination pursuant to this Section 3.4, this PILOT Agreement shall become null and void, and of no further force or effect between or among the parties; provided, however, Owner shall pay the applicable pro rata amount of In Lieu of Payments for the year in which such termination occurs to the extent that the real property remains fully exempt from property tax under IC 6-1.1-10-16.7.

Section 3.5. Upon termination of this PILOT Agreement, Owner shall pay the applicable pro rata amount of In Lieu of Payments for the year in which such termination occurs up to the date of termination to the extent that the real property remains fully exempt from property tax under IC 6-1.1-10-16.7 for such year, and receive a credit for all In Lieu of Payments already paid for such year. Upon termination of this PILOT Agreement, the parties hereto agree that that all other provisions of this PILOT Agreement, except for this Section 3.5, shall become null and void, and of no further force or effect between the parties.

Section 4. General Provisions.

Section 4.1. Captions; Incorporation and Exhibit. The captions and headings of various Articles, Sections and Exhibits referenced herein are for convenience only and are not to

be considered as defining or limiting in any way, the scope or intent of the provisions hereof. Notwithstanding the foregoing, each of the Recitals referenced herein are incorporated and expressly made a part hereof.

Section 4.2. Entire PILOT Agreement. This PILOT Agreement constitutes the entire agreement of the parties, and all prior discussions, negotiations and document drafts are merged herein.

Section 4.3. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered (effective upon delivery), if sent by reputable overnight courier, charges prepaid (effective the business day following delivery to such courier) or if mailed by United States registered or certified mail, postage prepaid, return receipt requested (effective two business days after mailing):

If to Owner: Country View Housing, LP
c/o Gene B. Glick Housing Foundation, Inc.
8801 River Crossing Blvd #200
Indianapolis, IN 46240

If to City: City of Bloomington
c/o Director, Economic & Sustainable Development
Department
401 North Morton Street, Suite 150
Bloomington, Indiana 47404

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other manner shall be deemed effective only upon receipt.

Section 4.4. Modification, Amendment or Waiver. No modification, waiver, amendment, discharge or change of this PILOT Agreement shall be valid unless the same is in writing and signed by all parties to this PILOT Agreement.

Section 4.5. Governing Law. This PILOT Agreement shall be governed by and construed under the laws of the State of Indiana, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this PILOT Agreement. Any action or proceeding arising out of this PILOT Agreement will be litigated in the courts located in Monroe County, Indiana. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Monroe County, Indiana.

Section 4.6. Time is of the Essence. Time is hereby declared to be of the essence of this PILOT Agreement and of every part hereof.

Section 4.7. Counterparts. This PILOT Agreement and any amendments hereof may be executed in one or more counterparts, each of which when so executed and delivered shall be

deemed to be an original, and all of which taken together shall constitute one and the same instrument.

Section 4.8. Severability. If any provision of this PILOT Agreement is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this PILOT Agreement will not be affected thereby. It is the intention of the parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable. Notwithstanding the foregoing, to the extent that the real property is not fully exempt from property tax, this Section 4.9 is null and void.

Section 4.9. No Joint Venture. Nothing contained in this PILOT Agreement will be construed to constitute any party as a joint venturer with the City or to constitute a partnership between any party and the City.

Section 4.10. Construction. The parties acknowledge that each party and each party's counsel have reviewed and revised this PILOT Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this PILOT Agreement or any amendments or exhibits hereto.

Section 4.11. Authorization. The persons executing and delivering this PILOT Agreement on behalf of the parties hereto represent and warrant to the other party that such person is duly authorized to act for and on behalf of said party, and execute and deliver this PILOT Agreement in such capacity as is indicated below.

Section 4.12. Assignment/Successor. This PILOT Agreement shall be binding upon City, and Owner, and all successor, grantees or assignees of Owner with respect to the Project (or any portion thereof) which would otherwise be entitled to claim an exemption for real property taxes imposed on the Project.

Section 4.13. Recording. The City will cause, at Owner's expense, this PILOT Agreement and any other instruments of further assurance to be promptly recorded, filed and registered, and at all times to be recorded, filed and registered, in such manner and in such places as may be required by law to preserve and protect fully the rights of the City hereunder as to all of the mortgaged property.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned parties have caused the execution of this PILOT Agreement by their duly authorized officers as of the Effective Date.

CITY OF BLOOMINGTON, INDIANA

By: _____
John Hamilton, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public, in and for said County and State, personally John Hamilton, acting for and behalf of the City of Bloomington, Indiana, who acknowledged the execution of the foregoing instrument as the Mayor of the City of Bloomington and who, having been duly sworn, stated that any and all representations and warranties contained therein are true and correct in all material respects.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

[Executions Continued on Following Page]

COUNTRY VIEW HOUSING, LP

By: _____
Name: _____
Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally _____, who acknowledged the execution of the foregoing instrument as _____, and who, having been duly sworn, stated that any and all representations and warranties contained therein are true and correct in all material respects.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:
