

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

and

JOHN WESLEY VILLAGE, L.P.

PROJECT AGREEMENT

Dated March 28, 2018

PROJECT AGREEMENT

THIS PROJECT AGREEMENT, dated March 28, 2018, is by and between the TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation and an industrial development agency of the State of New York (the "State") duly organized and existing under the laws of the State, having its office at the Town of Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York 11901 (the "Agency"), and JOHN WESLEY VILLAGE, L.P. , a limited partnership authorized to do business in the State of New York, having an office at 1 Aldersgate, Riverhead, New York 11901 (the "Company").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A, as amended, of the General Municipal Law of the State (the "Enabling Act") has been duly enacted into law as Chapter 1030 of the Laws of 1969 of the State; and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, improve, maintain, equip and lease or sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery, equipment and other facilities deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to enter into an agreement which includes provisions such as those contained herein (this agreement being hereinafter referred to as the "Project Agreement"); and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was created for the benefit of the Town of Riverhead, Suffolk County, New York (the "Town") and the inhabitants thereof by Chapter 624 of the Laws of 1980 (together with the Enabling Act, the "Act"); and

WHEREAS, the Company has made application to the Agency for Financial Assistance with respect to the acquisition and renovation of an existing 115-unit senior subsidized housing rental facility (the "Building") located at Middle Road, Riverhead, New York (SCTM #0600-082.000-0002-004.006)(the "Land"). The renovation shall include kitchen and bathroom replacements, removal of natural gas ranges and replacement with electric ranges, replacement of obsolete breaker panels, replacement of medical pull cord distress system with new wireless, central station monitored system, sidewalk area improvements, upgrade of site and walkway lighting, installation of rooftop photovoltaic solar panels, resurfacing of certain parking areas, and drilling and installation of irrigation wells for on-site landscaping use (the "Equipment") at an estimated cost of \$1,900,000. The facility will be purchased and renovated by John Wesley Village LP at a total project cost of \$12,804,393 (the "Building", "Land" and "Equipment" collectively known as the "Project"); and

WHEREAS, by Resolution, adopted on December 4, 2017 (the "Resolution"), the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (i) the provision of an exemption from Sales and Compensating Use Taxes on certain property, including tangible personal property in an amount not to exceed a total value of eligible goods and services in the amount of \$1,900,000, and (ii) the real property is currently exempt from school, county, town and fire taxation. During the term of the project benefit period the Applicant shall pay PILOT payments for school, county, town and fire taxes totaling \$2,175,000 as set forth on the Schedule A of the Payment In Lieu of Tax Agreement, and shall pay on an assessed value as determined by the Riverhead Board of Assessors all special district taxes for sewer, water, street lighting, ambulance, and sewer rent as paid by annual tax bill effective the 2018/2019 tax year, and (iii) the provision of an abatement of the Mortgage Recording Tax on a mortgage not to exceed \$12,000,000. The following mortgage shall be exempt from all mortgage recording taxes except that tax attributable to the Metropolitan Region Mortgage Transportation Tax, currently %.30: Bellwether Enterprise Real Estate Capital LLC Mortgage not to exceed the amount of \$12,000,000 (collectively, the sales and use tax exemption benefit, the mortgage recording tax benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$1,900,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$65,550, (ii) that the mortgage recording tax exemption amount not to exceed \$90,000 and (iii) that real property tax abatement benefits to be provided to the Company over the term of the anticipated payment-in-lieu-of tax agreement are estimated to be approximately \$3,819,289; and

WHEREAS, the Company proposes to lease the Facility to the Agency, and the Agency desires to rent the Facility from the Company pursuant to the terms of a certain Lease Agreement dated March 28, 2018 (the "Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to sublease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in a certain Sublease Agreement dated March 28, 2018 (the "Sublease Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of taxes for the Facility, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement, dated March 28, 2018 (the "PILOT Agreement"), by and between the Agency and the Company; and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to renovate and equip the Facility and to undertake the Project, the Agency and the Company will enter into this Project Agreement, dated March 28, 2018 by and between the Agency and the Company; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolutions and as more particularly described in the PILOT Agreement, Lease, Sublease Agreement, Guaranty, Sales Tax Authorization Letter and this Project Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of Town of Riverhead and to otherwise accomplish the public purpose of the Act. Therefore, the Agency is entering into the Lease Agreement, Sublease Agreement, PILOT Agreement, Guaranty, Sales Tax Agent Authorization Letter and Project Agreement.

2. PILOT Agreement. The parties hereto understand and agree that a certain PILOT Agreement, to be entered into, or entered into, by and between the Company and the Agency dated February 1, 2018 which is or shall be contemporaneously recorded with the Suffolk County Clerk and incorporated herein as if fully set forth.

3. HUD Mortgage. The United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the Loan under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the Loan or the Mortgaged Property (HUD) shall not be subject to the indemnification requirements stated herein. However, in the event that HUD takes possession and control of the property then, and only then to the extent allowed under applicable federal law, HUD shall be subject to the indemnification requirements stated herein. This Project Agreement shall be subordinate to the HUD mortgage.

4. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Lease Agreement, the Sublease Agreement, the PILOT Agreement, the Sales Tax Authorization Letter and the Project Agreement in order to provide Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolutions, the Company covenants and agrees that it may be subject to a Recapture Event (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance, as described below, if the Company receives, or its Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

(1) the Project shall be placed in service no later than two (2) years from the date hereof and shall maintain a valid and subsisting Certificate of Occupancy for all structures and uses; or

(2) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(3) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(4) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(5) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or

(6) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions, said Investment Commitment, Employment Commitment, and Local Labor Commitment, all as further defined below, being additional purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of the later of either (i) two (2) years following the renovation completion date or (ii) the calendar year of the termination of the PILOT Agreement (said date hereinafter referred to as the "Project Completion Date" and the time period so referenced being hereinafter defined as the "Material Terms and Conditions Monitoring Period") confirming the following:

(a) Investment Commitment - that the total investment actually made with respect to the Project at the Project's improvement schedule date equals or exceeds \$1,615,000 (which represents the product of 85% multiplied by \$1,900,000 being the total Project cost as stated in the Company's application for Financial Assistance); and

(b) Employment Commitment - that there are at least 6 existing full time equivalent ("FTE") employees of John Wesley Village, L.P. located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and that the Company has maintained 6 FTE

employees (representing the sum of 6 Baseline FTE plus the product of 85% multiplied by 0 (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company's application for Financial Assistance); and

(c) Local Labor Commitment - that the Company adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Policy on an annual reporting basis during the construction period; and

(d) Project Assessment Reporting Commitment – that the Company shall provide, annually, to the Agency, certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project.

In order to accomplish the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created in form as supplied by the Agency and as may be amended from time to time by the Agency.

The findings made by the Agency with respect to Section 3(a)(1), (2), (3), (4) and/or (5) and/or failure to provide the written confirmation as required by Section 3(a)(6) with respect to the thresholds and requirements as identified in Section 3(a)(6), above, and/or failure to meet the thresholds and requirements as identified in Section 3(a)(6) above, may potentially be determined by the Agency, in accordance with the Sales Tax Authorization Letter and Section 6.15 Recapture of Agency Benefits contained in the Sublease Agreement and/or a failure to comply with the Agency's policies and Resolutions (collectively, findings and determinations made as described herein with respect to Section 3(a)(1), (2), (3), (4) and/or (5) and/or the failure under Section 3(a)(6) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 3(a)(6) are hereby defined as a "Recapture Event"). If the Agency declares a Recapture Event, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(b) In accordance with the Resolution the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$1,900,000, and, therefore, the value of the

sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3(a) of this Agent Agreement, cannot exceed \$65,550.

(c) The Company acknowledges and understands that a Recapture Event made with respect to Section 3(a)(5) of this Project Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

5. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

6. Notices. All notices, certificates and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as any party may specify in writing to the other:

To the Company:

John Wesley Village, L.P.
1 Aldersgate
Riverhead, NY 11901

With Copy To:

With Copy To:

With Copy To:

To the Guarantor:

James Moore
1 Aldersgate
Riverhead, NY 11901

To the Agency:

Town of Riverhead Industrial Development Agency
Town of Riverhead Town Hall
200 Howell Avenue
Riverhead, NY 11901

Attention: Executive Director

7. Amendments. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

8. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

9. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

10. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

11. Due Authorizations, Execution and Delivery. The execution and delivery of this Agreement by the General Partner and the performance by the General Partner of the transactions contemplated hereby have been duly authorized by all requisite corporate, limited partnership, partnership or trust actions or proceedings. Each General Partner is duly organized, validly existing and in good standing under the laws of the state of its formation with power to enter into this Agreement and to consummate the transactions contemplated hereby.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Thomas Cruso, Chairman

JOHN WESLEY VILLAGE, L.P.
A limited partnership

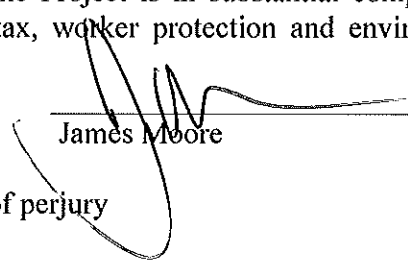
By: John Wesley Housing I, Inc., It's General Partner

By: _____
Name: James Moore
Title: President

STATE OF NEW YORK)
 New York) ss.:
COUNTY OF SUFFOLK)


James Moore, being first duly sworn, deposes and says:

1. That I am the President of John Wesley Housing I, Inc., the General Partner of John Wesley Village, L.P. and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

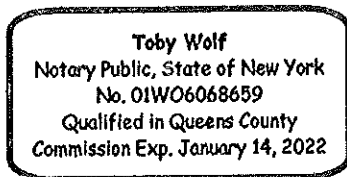


James Moore

Subscribed and affirmed to me under penalties of perjury
this 28 day of March, 2018.



(Notary Public)



STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the 26 day of March in the year 2018 before me, the undersigned, a notary public in and for said State, personally appeared Thomas Cruso 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 the person upon behalf of which the individual acted, executed the instrument.



Notary Public

RICHARD A. EHLERS
Notary Public, State of New York
Suffolk County No. 02EH4738288
Commission Expires February 28, 2022

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the day of March in the year 2018 before me, the undersigned, a notary public in and for said State, personally appeared James Moore 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 the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

Property Description

Fidelity National Title Insurance Company

TITLE NO. F17-7404-105055-SUFF

SCHEDULE A

ALL that certain plot, piece or parcel of land, situate, lying and being at Middle Road, Town of Riverhead, County of Suffolk and State of New York, bounded and described as follows:

Beginning at a point on the northerly line of Middle Road, which point is the following courses and distances as measured along the northerly line of Middle Road from a monument set at the southeasterly terminus of an arc of a curve connecting the easterly line of Nadel Drive with the northerly line of Middle Road:

- 1) North 83 degrees 32 minutes 58 seconds East, 163.73 feet;
- 2) North 89 degrees 56 minutes 28 seconds East, 199.87 feet;
- 3) North 80 degrees 26 minutes 28 seconds East, 45.00 feet;

Running Thence from said point of beginning northerly and westerly along other land of James P. Levin, et al., the following two courses and distances:

- 1) North 7 degrees 06 minutes 25 seconds West, 330.41 feet;
- 2) South 79 degrees 47 minutes 00 seconds West, 380.00 feet to the land of the Town of Riverhead;

Thence northerly along the land of the Town of Riverhead, along a realty subdivision entitled, "Roanoke Homes, Inc., Sec. 1", filed in the Office of the Clerk of Suffolk County under File No. 3126, and along a realty subdivision entitled, "Roanoke Homes Sec. 2" filed in the Office of the Clerk of Suffolk County under their file No. 3480 the following two courses and distances:

- 1) North 33 degrees 43 minutes 02 seconds West, 85.00 feet to a monument;
- 2) North 32 degrees 44 minutes 22 seconds West, 420.00 feet to a point;

Thence easterly, southerly and again easterly along other land of James P. Levin, et al., the following four courses and distances:

- 1) North 54 degrees 45 minutes 00 seconds East, 483.54 feet;
- 2) Along the arc of a curve bearing to the right having a radius of 55.00 feet a distance of 172.80 feet;
- 3) North 54 degrees 45 minutes 00 seconds East, 104.28 feet;
- 4) North 80 degrees 27 minutes 56 seconds East, 196.99 feet to the land now or formerly of Dual Farm Associates;

Thence southerly along the land now or formerly of Dual Farm Associates the following two courses and distances:

- 1) South 24 degrees 36 minutes 52 seconds East, 725.00 feet to a monument;

THE POLICY TO BE ISSUED under this commitment will insure the title to such buildings and improvements on the premises which by law constitute real property.

Fidelity National Title Insurance Company
TITLE NO. F17-7404-105055-SUFF

SCHEDULE A-
(Continued)

2) South 20 degrees 25 minutes 52 seconds East, 332.42 feet to a monument set on the northerly line of Middle Road;

Thence South 79 degrees 54 minutes 28 seconds West along the northerly line of Middle Road, 198.64 feet to a monument and land now or formerly of Harold Zeltmann;

Thence northerly, westerly and southerly along the land now or formerly of Harold Zeltmann, the following four courses and distances:

1) North 17 degrees 13 minutes 02 seconds West, 201.56 feet to a monument;

2) South 79 degrees 54 minutes 28 seconds West, 178.28 feet to a monument;

3) South 19 degrees 16 minutes 52 seconds East, 154.18 feet to a monument;

4) South 14 degrees 28 minutes 12 seconds East, 47.93 feet to a monument set on the northerly line of Middle Road;

Thence South 80 degrees 26 minutes 28 seconds West along the northerly side of Middle Road, 147.24 feet to the point or place of BEGINNING.