

PAYMENT IN LIEU OF TAX AGREEMENT

THIS AGREEMENT, made as of the day of _____, 2016 is by and among SKYLINE HOUSING DEVELOPMENT FUND CORPORATION, INC., a New York Not-For-Profit Corporation, formed pursuant to Article XI of the Private Housing Finance Law, having its offices at c/o The Michaels Development Company I, L.P., 3 East Stow Road, Suite 100, Marlton, NJ 08053 (“HDFC”), and the CITY OF ALBANY, a municipal corporation, with offices at 24 Eagle Street, Albany, New York 12207 (the “City”).

WITNESSETH

WHEREAS, the real property description attached as Schedule “A” outlines the affordable housing project known as the Skyline Garden Apartments, City of Albany, County of Albany, New York (the “Project”); and

WHEREAS, by Ordinance No. _____, adopted _____, 2016, the City approved a property tax exemption for the Project pursuant to section 577 of the Private Housing Finance Law, and

WHEREAS, the HDFC is or will be the fee simple owner of such Project; and

NOW, THEREFORE, in consideration of the HDFC’s ownership of the Project, and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. The Recitals are made a material part of this Agreement.
2. Pursuant to Section 577 of the Private Housing Finance Law, the Project shall be exempt from City/School and County real property taxes, other than assessments for local improvements. Such exemption shall be effective immediately upon acquisition of title to the subject real property by the HDFC. Such exemption shall also apply to any “supplemental taxes” levied upon transfer of title to the property, pursuant to section 520 of the Real Property Tax law. The exemption shall continue through the City’s 2057-2058 tax year, and the County’s 2058 tax year, unless terminated sooner under Sections 8 and 12 of this Agreement.
3. So long as some or all of the subject property is exempt from real property taxes, the HDFC shall make annual payments to the City, in lieu of taxes, equal to 10% of the annual “shelter rent” received on the tax-exempt properties, provided that in the first year of such exemption, no such payment shall duplicate any tax payment or payment in lieu of tax payment made on behalf of the Project under any existing abatement or exemption. “Shelter rent” shall mean gross rents less utility costs, as presently defined in Subsection 1(a) of Section 33 of the Private Housing Finance Law. The payments for a given tax year shall be computed on the rents received by the HDFC during its fiscal year ending within that tax year, and shall be paid within thirty (30) days after the end of the HDFC’s fiscal year. Any amount not paid by its due date shall accrue interest at the rate provided by law for the City’s real property taxes.

4. HDFC shall annually obtain audited financial statements prepared by an independent certified public accountant and prepare management reports of its compliance with all terms of this Agreement and of Article XI of the Private Housing Finance Law. HDFC shall provide such statements and reports to the City annually.

5. The City retains all applicable rights granted to it as a Supervising Agency under the Housing Development Fund Companies Law (Article XI of the Private Housing Finance Law) to regulate and monitor the Project and HDFC. HDFC shall comply with all applicable provisions of Article XI of the Private Housing Finance Law in its ownership and operation of the Project.

6. If HDFC violates any provision of this Agreement, and such violation is not cured within sixty (60) days after receipt of written notification of such violation by the City, and if HDFC is not acting to cure such violation, the tax exemption granted hereunder shall immediately terminate.

7. Special district charges, special assessments, and special ad valorem levies, unless otherwise exempt, are to be paid in full in accordance with normal billing practices.

8. HDFC shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment with respect to the land or Project by any of the taxing jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors of Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

9. The term of this Agreement, though, shall terminate sooner: (i) if HDFC shall sell, or otherwise transfer title in the land or Project to any party or parties without the prior written consent of the City (including by Deed in Lieu of Foreclosure or Referee's Deed); or (ii) if the land or Project shall be foreclosed through any action by any mortgage holder or taxing authority.

10. In the event this Agreement is terminated as outlined herein, then HDFC agrees to pay no later than the next tax lien date, to each taxing jurisdiction, an amount equal to the taxes and assessments which would have been levied on the Project if the Project had been classified as fully taxable as of the date of loss of eligibility of all or a portion of the exemption described herein.

11. To the extent the Project is declared to be subject to taxation or assessment by an amendment to present law, other legislative change or by final judgment of a court of competent jurisdiction, then the obligations of HDFC hereunder shall, to such extent, be null and void.

12. If payments are not made as provided for herein, the City shall be entitled to pursue any and all remedies afforded to it at law or in equity.

13. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the ____ day of _____, 2016.

SKYLINE HOUSING DEVELOPMENT FUND CORPORATION, INC.

BY: _____

Name:

Title:

CITY OF ALBANY

BY: _____

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

On the ____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, 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 s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, 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 s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**SCHEDULE A
PROJECT DESCRIPTION**

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