

TOWNSHIP OF VERONA  
COUNTY OF ESSEX, STATE OF NEW JERSEY

RESOLUTION No. 2022-040

A motion was made by Councilman Tamburro; seconded by Deputy Mayor McGrath that the following resolution be adopted:

**AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO AND  
ASSIGNMENT OF REDEVELOPER AGREEMENT, A SECOND  
AMENDMENT TO AND ASSIGNMENT OF AGREEMENT FOR PAYMENT  
IN LIEU OF TAXES, AND A FIRST AMENDMENT TO AND ASSIGNMENT  
OF THE CONTRACT FOR SALE, WITH PIRHL DEVELOPERS, LLC AND  
VERONA LIHTC URBAN RENEWAL LLC CONCERNING PROPERTY  
IDENTIFIED AS BLOCK 2301, LOTS 11, 12, 14, 15, 16, 17, A PORTION OF 18,  
AND 19 ON THE TOWNSHIP TAX MAPS**

**WHEREAS**, on February 11, 2019, the Township Council for the Township of Verona (the "**Township Council**") adopted Resolution No. 2019-55, designating as a non-condemnation redevelopment area, as defined in the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.* (the "**Redevelopment Law**"), Block 2301, Lots 1 through 12 and 14 through 19 as shown on the Tax Map of the Township, commonly known as the "Depot and Pine Redevelopment Area," (the "**Redevelopment Area**"); and

**WHEREAS**, by Ordinance No. 2019-16 the Township Council adopted a redevelopment plan for the Redevelopment Area entitled "Depot and Pine Redevelopment Area, Redevelopment Plan, Block 2301, Lots 1-12, 14-19, Township of Verona, New Jersey", dated April 22, 2019 (as may be amended and supplemented from time to time, the "**Original Redevelopment Plan**"); and

**WHEREAS**, PIRHL Developers, LLC (the "**Redeveloper**") and the Municipality entered into an agreement for payments in lieu of taxes dated January 9, 2020 providing for a tax exemption and payments in lieu of taxes pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 *et seq.* (the "**HMFA Law**") for the construction of an affordable housing project on Block 2301, Lots 11, 12, 14, 15 and 16 (the "**Original PILOT Agreement**"); and

**WHEREAS**, the Township and the Redeveloper have entered into that certain redeveloper agreement dated January 9, 2020, which contemplates the donation of Block 2301, Lots 11, 12, 14, 15, and 16 to the Redeveloper in exchange for the construction of an affordable housing project thereon (the "**Original Redeveloper Agreement**"); and

**WHEREAS**, by Ordinance No. 2020-04 adopted on February 24, 2020, the Township Council adopted a First Amendment to the Original Redevelopment Plan dated January 21, 2020 (the "**First Amendment to Redevelopment Plan**"); and

**WHEREAS**, by Ordinance No. 2020-14 adopted on June 29, 2020, the Township Council adopted a Second Amendment to the Original Redevelopment Plan dated May 28, 2020 (the "**Second Amendment to Redevelopment Plan**") (the Original Redevelopment Plan, First Amendment to Redevelopment Plan and Second Amendment to Redevelopment Plan, collectively referred to herein as the "**Redevelopment Plan**"); and

**WHEREAS**, the Township and the Redeveloper entered into a First Amendment to Redeveloper Agreement dated September 3, 2020 to include Lots 17, a portion of Lot 18, and Lot 19 and to amend the project description to provide for an affordable housing project consisting of not less than 95 units to be constructed on Block 2301, Lots 11, 12, 14, 15, 16, 17, a portion of 18, and 19 (the "**First RDA Amendment**", together with the Original Redeveloper Agreement, the "**Redeveloper Agreement**"); and

**WHEREAS**, the Township and Redeveloper desire to modify certain terms of the Redeveloper Agreement and effectuate the assignment of Redeveloper's right, title and interest in and to the Redeveloper Agreement to Verona LIHTC Urban Renewal LLC, an urban renewal entity with the same majority ownership as the Redeveloper, making the assignment a Permitted

Transfer under the Redeveloper Agreement (the “**Second Amendment to and Assignment of Redeveloper Agreement**”); and

**WHEREAS**, the Township and the Redeveloper entered into a First Amendment to Agreement for Payments in Lieu of Taxes dated September 3, 2020, to amend the property and project as set forth in the First RDA Amendment (the “**First PILOT Amendment**”, together with the Original PILOT Agreement, the “**PILOT Agreement**”); and

**WHEREAS**, the Township and Redeveloper desire to modify certain terms of the PILOT Agreement and effectuate the assignment of Redeveloper’s right, title and interest in and to the PILOT Agreement to Verona LIHTC Urban Renewal LLC (the “**Second Amendment to and Assignment of Agreement for Payment In Lieu of Taxes**”); and

**WHEREAS**, the Township and Redeveloper entered into a Contract for Sale of Real Estate dated June 9, 2020, providing for the conveyance of the Property by the Township to Redeveloper for the construction of an affordable housing project thereon (the “**Contract for Sale**”); and

**WHEREAS**, the Township and Redeveloper desire to modify certain terms of the PSA and effectuate the assignment of Redeveloper’s right, title and interest in and to the PSA to Verona LIHTC Urban Renewal LLC (the “**First Amendment to Contract for Sale**”).

**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Verona as follows:

1. The preamble to this Resolution is hereby incorporated as if more fully set forth herein.
2. The Township Manager and Township Clerk are hereby authorized to execute the Second Amendment to and Assignment of Redeveloper Agreement, in the form attached hereto as Exhibit A, with such changes, omissions or amendments as the Township Manager deems appropriate in consultation with the Township’s redevelopment counsel, planning consultant and other professionals.
3. The Township Manager and Township Clerk are hereby authorized to execute the Second Amendment to and Assignment of Agreement for Payment In Lieu of Taxes, in the form attached hereto as Exhibit B, with such changes, omissions or amendments as the Township Manager deems appropriate in consultation with the Township’s redevelopment counsel, planning consultant and other professionals.
4. The Township Manager and Township Clerk are hereby authorized to execute the First Amendment to and Assignment of Contract for Sale, in the form attached hereto as Exhibit C, with such changes, omissions or amendments as the Township Manager deems appropriate in consultation with the Township’s redevelopment counsel, planning consultant and other professionals.
5. This resolution shall take effect immediately.

**ROLL CALL:**

**AYES:** Holland, Tamburro, McEvoy, McGrath, Roman

**NAYS:**

**THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF VERONA AT THE REGULAR MEETING HELD ON FEBRUARY 7, 2022.**

  
JENNIFER KIERNAN  
MUNICIPAL CLERK



**EXHIBIT A**

SECOND AMENDMENT TO AND ASSIGNMENT OF REDEVELOPER AGREEMENT

**SECOND AMENDMENT TO**  
**AND ASSIGNMENT OF**  
**REDEVELOPER AGREEMENT**  
**BY AND BETWEEN**  
**THE TOWNSHIP OF VERONA**  
**AND**  
**PIRHL DEVELOPERS, LLC**  
**AND**  
**VERONA LIHTC URBAN RENEWAL LLC**



THIS SECOND AMENDMENT TO AND ASSIGNMENT OF REDEVELOPER AGREEMENT (this “**Amendment**”) dated as of February \_\_, 2022 (the “**Effective Date**”), between PIRHL DEVELOPERS, LLC (“**Assignor**”), an Ohio limited liability company with an office at 5 Commerce Way, Suite 204, Hamilton, New Jersey 08691, VERONA LIHTC URBAN RENEWAL LLC (“**Assignee**”), a New Jersey limited liability company with an office at 5 Commerce Way, Suite 204, Hamilton, New Jersey 08691, and the TOWNSHIP OF VERONA (the “**Township**”), a municipal corporation in the County of Essex and the State of New Jersey with an office at Bloomfield Avenue, Verona, New Jersey. Assignee and the Township are collectively referred to as the “**Parties**”.

## RECITALS

A. Assignor and the Township are parties to that certain Redeveloper Agreement, dated January 9, 2020, as amended by that certain First Amendment to Redeveloper Agreement, dated September 3, 2020 (the “**Redeveloper Agreement**”), pursuant to which Assignor, as redeveloper thereunder, agreed to redevelop that property designated as Block 2301, Lots 11, 12, 14-17, 19 and a portion of Lot 18, to be consolidated and designated as new Block 2301, Lot 14.01 on the official tax map of the Township of Verona, as more particularly described in the Agreement.

B. Assignor and the Township desire to modify certain terms of the Redeveloper Agreement (this Amendment together with the Redeveloper Agreement, the “**Agreement**”).

C. Assignor desires to assign its right, title and interest in and to the Agreement to Assignee as of the Effective Date, and Assignee desires to accept such assignment and assume all terms, obligations, covenants, conditions and provisions binding on Assignor under the Agreement upon the terms and conditions set forth in the Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

“**Affiliate**” means with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“**Applicable Laws**” means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or

enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties, the Property, the Project, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under the Agreement, including without limitation, the Redevelopment Plan, the Redevelopment Law, the MLUL, the Local Land and Buildings Law, *N.J.S.A. 40A:12-1 et seq.*, the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, the Redevelopment Area Bond Financing Law, *N.J.S.A. 40A:12A-64 et seq.*, Environmental Laws, the Fair Housing Act of 1985, *N.J.S.A. 52:27D-301 et seq.*, affordable housing regulations, relevant construction codes including construction codes governing access for people with disabilities, and all other applicable federal, state or local zoning, land use, health and safety laws, ordinances, rules and regulations, and federal and state labor standards or regulations, if any, including but not limited to the Prevailing Wage Law.

**“Environmental Laws”** mean any applicable federal, state, local, municipal or other statutes, laws, ordinances, rules, regulations or other legally enforceable requirement, whether presently existing or hereinafter enacted, promulgated or otherwise created for the protection of the environment or human health from Hazardous Substances, as the same may be amended or supplemented from time to time, including, without limitation, (a) the New Jersey Spill Compensation and Control Act, as amended, *N.J.S.A. 58:10-23.11, et seq.* (the “Spill Act”); (b) the New Jersey Industrial Site Recovery Act, as amended, *N.J.S.A. 13:1K-6, et seq.* (“ISRA”); (c) the New Jersey Underground Storage of Hazardous Substances Act, as amended, *N.J.S.A. 58:10A-21, et seq.*; (d) the New Jersey Site Remediation Reform Act, *N.J.S.A. 58:10C-1, et seq.*; (e) the Comprehensive Environmental Response, Compensation & Liability Act, as amended, 42 *U.S.C.* Section 9601, *et seq.* (“CERCLA”); (f) the Resource Conservation and Recovery Act, as amended, 42 *U.S.C.* Section 6901, *et seq.* (“RCRA”); (g) the Hazardous Material Transportation Act, as amended, 49 *U.S.C.* Section 180, *et seq.*; (h) the Occupational Safety and Health Act, as amended, 29 *U.S.C.* Section 651, *et seq.*; (i) the New Jersey Solid Waste Management Act, as amended, *N.J.S.A. 13:1E-1, et seq.* (“SWMA”); (j) the Brownfield and Contaminated Site Remediation Act, *N.J.S.A. 58:10B-1, et seq.*; (k) the Administrative Requirements for the Remediation of Contaminated Sites, *N.J.A.C. 7:26C, et seq.*; (l) the NJDEP Remediation Standards, *N.J.A.C. 7:26D, et seq.*; or (m) the Technical Requirements for Site Remediation, *N.J.A.C. 7:26E, et seq.*

**“Governmental Authority”** means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority or jurisdiction over any part of the permitting, remediation, construction or operation of the Project or the Property, or pursuant to Environmental Laws including without limitation, the Planning Board and the NJDEP.

**“Hazardous Substance”** means any substance, material or waste (whether liquid, gaseous or solid) and any pollutant, irritant or contaminant that is: (i) infectious, toxic, hazardous,

explosive, corrosive, flammable or radioactive; or (ii) regulated under, or defined, listed or referred to or included in any Environmental Laws; including without limitation, CCPW, extractable petroleum hydrocarbons (“EPHs”), petroleum products and petroleum based derivatives, polychlorinated biphenyls (“PCBs”), asbestos and asbestos containing materials, urea formaldehyde, and contaminated historic fill material (as defined in *N.J.A.C. 7:26E-1.8*). Where an Environmental Law defines any of these terms more broadly than another, the broader definition shall apply.

“**Person**” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or partnership, trust, unincorporated association, urban renewal entity, institution, public or governmental body, or any other entity.

“**PSA**” means the Contract for Sale of Real Estate dated June 9, 2020 between the Township and Redeveloper for the sale of the Property, as may be amended.

“**Township Indemnified Parties**” means the Township and its officers, elected officials, Affiliates, agents, employees, contractors, boards, departments, officials and consultants and their respective successors and assigns.

2. Amendment to Section 1.3.1. Section 1.3.1 and subsequent subsections of Section 1.3.1 are deleted in their entirety and replaced with the following:

**1.3.1 Conveyance.** Subject to the Redeveloper meeting its obligations as described in this Agreement, the Township agrees to convey the Property to the Redeveloper at no cost and upon the terms and conditions as set forth in the PSA, which terms and conditions are incorporated herein by reference.

3. Amendment to Section 1.3.3. The second and third sentences of Section 1.3.3 shall be deleted in their entirety and replaced with the following: “The Environmental Remediation shall include, without limitation, the Recommendations as set forth in that certain (i) Phase I Environmental Site Assessment / Preliminary Assessment for Bloomfield Avenue and Pine Street, Block 2301, Lots 11, 12, 14, 15, 16, 17, Portion of 18 & Lot 19, Township of Verona, Essex County, New Jersey, prepared by EcolSciences, Inc., dated December 17, 2021; and (ii) Phase II Investigation Results, prepared by EcolSciences, Inc., dated December 23, 2021 (the “Phase II”). Except as otherwise set forth herein, the Township, at its sole cost and expense, shall perform (or cause to be performed) all of the Environmental Remediation, including, without limitation, installation of monitoring wells, groundwater sampling, and remediation of any PFOAs, and shall be responsible for the costs, or the reimbursement thereof, as applicable, of any environmental investigations performed at the Property. Notwithstanding the foregoing, Redeveloper, at its sole cost and expense, shall perform (or cause to be performed) the capping of the Property as necessary to address the historic fill identified in the Phase II. In either instance, the Environmental Remediation shall be completed to such standards as are required by the NJDEP to use the Property for residential purposes.”

4. Amendment to Section 1.3.4. Section 1.3.4 is deleted in its entirety and replaced with the following:

**1.3.4 Purchase Option and Right of First Refusal.** The Property can only be used for the purpose of constructing housing for low or moderate income persons or families or persons with disabilities. Prior to issuance of a Certificate of Completion for the Project:

(i) if (1) Redeveloper closed on the syndication of tax credits with the Investor Member, and (2) an event of default under the PSA or the Agreement shall have occurred which remains uncured following the expiration of all applicable notice and cure periods, and (3) following which or in connection therewith, an Investor Member or a Lender assumes the Redeveloper's obligations hereunder or has reasonably promptly commenced the enforcement of its respective remedies on account thereof, the Township shall not terminate this Agreement and the Property shall not revert to the Township, unless (x) a Certificate of Completion is not issued prior to December 31, 2025, except in the event the Property was completed in accordance with the terms of this Agreement prior to December 31, 2025 and the failure to issue a Certificate of Completion by such date was due to the fault or inaction of the Township, and (y) Township thereafter elects to terminate this Agreement and enforce such right of reverter with no payments or reimbursements to Redeveloper in accordance with the terms hereof; and

(ii) if (1) Redeveloper has not closed on the syndication of tax credits with the Investor Member, and (2) an event of default under the PSA or the Agreement shall have occurred which remains uncured following the expiration of all applicable notice and cure periods, then Township shall have the right to terminate this Agreement and the PSA in accordance with their respective terms, and upon such termination title to the Property shall revert back to the Township without any further act on the Township's part and with no payments or reimbursements to Redeveloper; and

(iii) if Redeveloper closed on the syndication of tax credits with the Investor Member and (1) an event of default under the PSA or the Agreement shall have occurred which remains uncured following the expiration of all applicable notice and cure periods and (2) following which or in connection therewith, an Investor Member or a Lender has failed to assume the Redeveloper's obligations hereunder or has failed to reasonably promptly commence the enforcement of its respective remedies on account thereof, then Township shall have the right to terminate this Agreement and the PSA in accordance with their respective terms, and upon such termination title to the Property shall revert back to the Township without any further act on the Township's part and with no payments or reimbursements to Redeveloper.

In the event of a reversion of the Property in accordance with the terms hereof, the Township shall take title to the Property subject to the outstanding debt on the Property. Upon such termination and reverter, the Redeveloper shall restore the Property to the condition it was prior to acquisition by the Redeveloper subject to approval by the Township.



Following the issuance of a Certificate of Completion for the Project, the parties agree that the Property shall be subject to a deed restriction requiring its use as housing for low and moderate income persons or families or persons with disabilities for a period of forty-five (45) years. If at any time thereafter the Property ceases to be used for these purposes, the Township shall have a right of first refusal to purchase the Property, including the Project (the “**Refusal Right**”) for an amount equal to the fair market value of the Project improvements, which shall not be less than the outstanding debt on the Property and exit taxes, unless Redeveloper agrees to pay the Township for the fair market value of the land at that time. This Section 1.3.4 survives termination of the Agreement.

5. Amendment to Section 2.1.1. Section 2.1.1 is deleted in its entirety and replaced with the following:

**2.1.1 Acquisition of Property.** Redeveloper, or its designee, shall acquire good and marketable fee simple title to the Property by delivery of a bargain and sale deed no later than (a) one (1) year from the execution of the PSA or (b) nine (9) months from the NJHMFA’s written award of Tax Credits to the Project, unless this date is extended by the Parties.

6. Amendment to Section 2.3.1. The first sentence of Section 2.3.1 is deleted in its entirety.

7. Amendment to Section 2.3.2. Paragraphs (e) and (f) of Section 2.3.2 are deleted in their entirety and replaced with the following:

(e) Redeveloper shall make application to the Township for issuance of building permits at least forty-five (45) days prior to acquisition of the Property. Redeveloper agrees to proceed in good faith and with continuity of purpose to commence construction of the Project within ninety (90) days after the issuance of a Building Permit for the Project.

(f) Redeveloper agrees to use commercially reasonable efforts and with continuity of purpose to complete construction of the Project on or before twenty-four (24) months after issuance of a building permit for the Project. Except for a delay caused by a Force Majeure event as set forth in Section 9.1 herein, in no event shall Redeveloper delay, suspend, or abandon construction for a period of more than sixty (60) days.

8. Amendment to Section 4. Section 4 is deleted in its entirety and replaced with the following:

Redeveloper is executing this Agreement governing all rights and obligations of Redeveloper and Township with respect to the Project and the Property. The Redeveloper has the right to form one or more affiliated entities under common control with the Redeveloper, including an urban renewal entity (each, a “**Permitted Transferee**”), to hold title or interest to the Project and/or the Property and develop, construct, maintain and/or

operate the Project as contemplated hereunder and the Redeveloper shall have the right to assign this Agreement in whole or in part to such Permitted Transferee, without the approval of the Township but upon written notice to the Township (a “**Permitted Transfer**”). In furtherance of and not in limitation of the foregoing, the following shall also be considered a Permitted Transfer hereunder: (i) the transfer of membership interests to an investor member(s) who will become an equity investor in Redeveloper, including, without limitation, Riverside Housing Partnership II 2019, LLC and Riverside Manager, LLC D/B/A Berkadia Affordable Manager, or their respective affiliates, successors and/or assigns (an “**Investor Member**”), so long as such transfer will not result in such Investor Member having control over and the responsibility for the conduct of the business and management of the affairs of Redeveloper; (ii) utility and other necessary easements to facilitate development of the Project; and (iii) the establishment of a condominium regime at the Property and the recordation of a master deed and associated documents against the Property in connection therewith, as well as a conveyance of driveways, roads, infrastructure, open space and other common property to a property owners' association, condominium association, or similar entity. In the event of a Permitted Transfer, the respective rights, duties and obligations of the Township shall not be diminished or modified as a result of the Redeveloper’s determination to make use of such Permitted Transfers and the Permitted Transferee shall become responsible for satisfaction of the Redeveloper’s duties and obligations hereunder and the Township shall look to such Permitted Transferee for performance of such duties and obligations. Any bonding posted by the Redeveloper under the MLUL shall also be transferred and/or assigned to such Permitted Transferee upon the adoption of a Resolution of the Township Council authorizing same.

Notwithstanding anything to the contrary contained herein, the Township agrees that no prior approval is required for (i) the internal reorganization of the corporate or partnership structure of an Investor Member, or (ii) the exercise by any such Investor Member or its affiliates of their rights to remove the managing member, as applicable, and to designate an affiliate of such Investor Member as the interim substitute managing member of the Redeveloper under the terms of Redeveloper’s operating agreement, provided that the Township shall be given written notice of such Investor Member’s exercise of the removal and appointment right under such operating agreement, inclusive of a description of the default giving rise to such right or remedy. In addition, the consent of the Township shall not be required for any exercise by an Investor Member of its right to enforce any applicable repurchase requirements or options under Redeveloper’s operating agreement.

Further notwithstanding anything to the contrary contained herein, the replacement of the Redeveloper as a result of the foreclosure of the NJHMFA’s first mortgage or any other first mortgage lender (including the construction lender) shall not require the consent of the Township and shall not constitute a default under this Agreement, *provided that*, the replacement entity signs an assumption agreement that obligates it keep all the covenants and agreements contained in this Agreement and/or the Financing, Deed Restriction and Regulatory Agreement that will be recorded in connection with the NJHMFA’s first mortgage.

Except as otherwise expressly set forth herein, the Redeveloper shall be without power to sell or lease (except to tenants in the ordinary course of business of operating the Project as contemplated hereunder or to an affiliated entity of Redeveloper) the Property or the Project, or to affect a transfer in the managing member's ownership interest in Redeveloper which would operate as a conveyance of the Property or Project.

9. Amendment to Section 5.1. Section 5.1 is deleted in its entirety and replaced with the following:

### **5.1 Event of Default by Redeveloper**

It shall constitute an event of default hereunder if Redeveloper or its successor in interest shall default in or violate its obligations in a material respect with respect to its obligations under this Agreement, and any such default, violation, abandonment, or suspension does not arise out of a Force Majeure event as described in Section 9.1 herein, and shall not be cured, ended, or remedied within ninety (90) days after written demand by the Township to do so, or such longer periods of time that may be mutually agreed upon if the event of default is incapable of cure within such period, provided that Redeveloper has commenced and is diligently prosecuting such cure (a "**Redeveloper Event of Default**").

Notwithstanding the foregoing, if, in the Redeveloper's reasonable judgment, changes to the Tax Credit rules enacted in the NJHMFA's Qualified Allocation Plan during the term of this Agreement make it unlikely that the Project will successfully complete for funding, the Redeveloper may terminate this Agreement, in which event this Agreement shall become null and void, and the Redeveloper and the Township shall have no further rights, obligations or liabilities hereunder except as otherwise specifically set forth in this Agreement, including but not limited to, the provisions contained in Section 1.3.4 herein.

10. Amendment to Section 5.2. Section 5.2 is deleted in its entirety and replaced with the following:

### **5.2 Township's Remedies**

Upon the occurrence of any Redeveloper Event of Default, the Township shall have the rights at its sole and absolute discretion, after expiration of the notice and cure period in Section 5.1 herein, to:

- (a) Terminate this Agreement and neither party shall have any further liability hereunder, except those that specifically survive termination of this Agreement, and upon such termination, Redeveloper will provide to the Township copies of all non-proprietary plans and due diligence documents in its possession related to the Project, or
- (b) Bring an action for specific performance hereunder and/or pursue actual damages.

11. Amendment to Section 6.1. The following shall be added to the end of Section 6.1: “The Township shall also provide copies of all notices given in connection herewith to the Investor Member and its counsel to the extent that they provide written notice to the Township of their contact information. Township acknowledges and agrees that any such Investor Member shall have the right, but not the obligation to effectuate the cure of any default by Redeveloper hereunder and Township shall accept any such cure proffered by an Investor Member.”

12. Amendment to Section 8.6. The first paragraph of Section 8.6 is deleted in its entirety and replaced with the following:

### **8.6 Covenants and Restrictions**

The following covenants and restrictions are imposed upon Redeveloper, its successors and assigns, and are intended to run with the land until a Certificate of Completion has been issued for the Project. A declaration of such covenants shall be recorded by Redeveloper in the Essex County Clerk’s office simultaneously with the acquisition of the Property by Redeveloper.

13. Amendment to Subsection 8.6.9. Subsection 8.6.9 is deleted in its entirety and replaced with the following:

**8.6.9 Affordable Housing Restriction.** In addition to the foregoing, the Redeveloper shall cause to be recorded against the Property prior to the issuance of any Certificate of Completion, a 45 year affordable housing restriction naming the Township as a beneficiary, in a form satisfactory to the Township Attorney, and in accordance with the requirements of the Fair Housing Act and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq., except as exempted by Section 42 of the Internal Revenue Code relative to Federal Low-Income Housing Tax Credits, in which case, Section 42 of the Internal Revenue Code shall control. Redeveloper acknowledges that the expiration of controls for ownership and rental units is governed by N.J.A.C. 5:80-26.5 and N.J.A.C. 5:80-26.11 respectively.

14. New Section 21.1; Indemnification/Insurance after acquisition of the Property by Redeveloper. The following new Section 21.1 is hereby added to the Agreement:

### **21.1 Indemnification/Insurance after acquisition of the Property by Redeveloper.**

(a) After acquisition of the Property, Redeveloper agrees to indemnify and hold harmless and defend the Township and the Township Indemnified Parties, and Redeveloper shall pay any and all liability, actual loss, costs, damages, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, including but not limited to, claims for personal injury, death and property damage, which the Township and/or the Township Indemnified Parties may sustain, be subject to or be caused to incur relating to, based upon or arising from (i) Redeveloper’s activities in connection with the Project, or any portion thereof; (ii) contracts entered into by the Redeveloper which relate to such activities, including but not limited to any

and all claims by workmen, employees and agents of the Redeveloper, its contractor and subcontractors and unrelated third parties; (iii) the maintenance and functioning of the Project, or any other activities of Redeveloper within the Property; (iv) the Redeveloper's capping of the Property or other environmental conditions arising after the Redeveloper takes ownership of the Property, with exception for any condition that existed prior to closing or is caused by or subject to the Township's remediation obligations set forth in Section 1.3.3; (v) a material breach of this Agreement by Redeveloper; or (vi) any violation of Applicable Law by Redeveloper, unless any such loss, liability claim or suit arising from the grossly negligent or intentional wrongful acts of the Township, its employees, agents and contractors.

(b) Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions which may be brought or asserted against the Township, and/or the Township Indemnified Parties; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend Redeveloper, the Township and any other insured named or named as an additional insured in such policy of insurance in connection with claims, suits or actions covered by such policy. Any cost for reasonable fees in situations where it is required that the Township engage its own attorneys, experts' testimony costs and all actual costs to defend the Township or any Township Indemnified Party, agents, servants, or employees shall be reimbursed to it by Redeveloper in connection with such defense and indemnification claim.

(c) In any situation in which the Township Indemnified Parties are entitled to receive and desire defense and/or indemnification by Redeveloper, the Township Indemnified Parties shall give prompt notice of such situation to Redeveloper. Failure to give prompt notice to Redeveloper shall not relieve Redeveloper of any liability to indemnify the Township Indemnified Parties. Upon receipt of such notice, Redeveloper shall resist and defend any action or proceeding on behalf of the Township Indemnified Parties, including the employment of counsel reasonably acceptable to the Township Indemnified Parties, the payment of all reasonable expenses and the right to negotiate and consent to settlement. The Township shall have the right to retain counsel of its choosing, the cost of which shall be borne by Redeveloper. All of the other Township Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof at their own expense. Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of Redeveloper or if there is a final judgment against Redeveloper or the Township Indemnified Parties in any such action, Redeveloper shall indemnify and hold harmless the Township Indemnified Parties from and against any loss or liability by reason of such settlement or judgment. Further, Redeveloper shall have the right to settle any such action on behalf of itself and all Township Indemnified Parties, provided that such settlement (i) is solely a monetary payment, (ii) does not involve the entry of a judgment against the Township or any Township Indemnified Parties and (iii) does not expose the Township Indemnified Parties to any liability, contingent or otherwise. Redeveloper shall indemnify and hold harmless the Township Indemnified Parties from and against any loss or liability by reason of such settlement.

(d) The provisions of Section 21.1 shall survive the termination of this Agreement.

(e) Prior to the commencement of construction of the Project, the Redeveloper shall furnish or shall cause to be furnished, to the Township, a certificate of insurance evidencing (i) a policy of commercial general liability insurance for bodily injury and property damage on the Property or related to the construction thereon, in the amount of at least Ten Million Dollars (\$10,000,000.00) combined single limit coverage, which policy shall include blanket contractual liability coverage; and (ii) a policy of Builder's Risk Insurance for the benefit of the Redeveloper (subject to the interests of any Holder), during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the Project, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(f) The Redeveloper shall also furnish or cause to be furnished to the Township evidence satisfactory to the Township that the Redeveloper and any contractor with whom it has contracted for the construction of the Project carries (i) workers' compensation insurance coverage in the amount of the full statutory liability of the Redeveloper, (ii) employer's liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) bodily injury each accident, Five Hundred Thousand Dollars (\$500,000.00) bodily injury each employee and Five Hundred Thousand Dollars (\$500,000.00) bodily injury policy limit, (iii) commercial general liability insurance in the amount One Million Dollars (\$1,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) general aggregate, and (iv) such other insurance, in such amounts and against such risks, as is customarily maintained by the Redeveloper with respect to other similar properties owned or leased by it, including automobile insurance.

(g) All insurance policies required by this Section shall be obtained from insurance companies licensed in the State and rated at least A in Best's Insurance Guide or such lesser rated provider that is proposed by the Redeveloper and is reasonably acceptable to the Township. All insurance policies required hereunder shall be kept in force until a Certificate of Completion is issued.

(h) All insurance policies required by this Section shall be nonassessable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by the Township, (ii) the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the Township, and (iii) the Township shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to the Township and shall contain cross liability endorsements.

(i) The Redeveloper's obligation to maintain insurance in this Section 21.1 shall terminate upon issuance of the final Certificate of Completion with respect to the Project.

15. New Section 23; Lender Provisions. The following new Section 23 is hereby added to the Agreement:

**SECTION 23. REDEVELOPER FINANCING; RIGHTS OF MORTGAGEE**

**23.1 Mortgage Financing**

(i) **Mortgage.** Redeveloper shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon any portion of the Property whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to any portion of the Property, except as may be specifically required for the purpose of obtaining funds in connection with the acquisition and development of any portion of the Property, including but not limited to architecture, design, engineering, entitlements, legal costs and marketing and construction of the Project; provided, however, that upon the issuance of the Certificate of Completion for the Project or any portion thereof, such prohibition shall no longer apply to the Project or such portion. Redeveloper shall notify the Township within twenty (20) days of obtaining such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project or any part thereof (the mortgagee thereunder or its affiliate, a “Lender”). The provisions of this Agreement shall not be deemed to grant the Township the right to approve or review the terms of any such proposed financing. A Lender shall not be deemed to be an assignee or transferee of the Agreement or of the interests of the Redeveloper under the Agreement so as to require Lender to assume the performance of, or be bound to perform, any of the terms, covenants or conditions under the Agreement other than as set forth in Section 23.1(iii) below.

(ii) **Pledge or Assignment to Lender.** The Township acknowledges that Redeveloper shall have the right to (a) pledge its interest in the Agreement to a Lender without limit as to amount and on any terms Redeveloper may deem desirable, and (b) assign Redeveloper's interest under the Agreement to said Lender as additional collateral for the payment of the indebtedness secured by a mortgage or similar security agreement made by Redeveloper to said Lender (each such mortgage, a “Lender Mortgage”). However, subject to Section 23.1(iv) below, any Lender Mortgage always shall be subject and subordinate in all respects to the Agreement. The making and delivery of a Lender Mortgage shall not be deemed to constitute any assignment or transfer of the Agreement or of the interest of Redeveloper under the Agreement. However, subject to the provision of this Section 23.1, a Lender may become the legal owner of Redeveloper's interest under the Agreement with respect to the Property by foreclosure of its Lender Mortgage or as a result of the assignment to it of the Agreement in lieu of foreclosure or otherwise and in such event are bound by such Agreement pursuant to Section 23.1(iv) below.

(iii) **Certain Rights of Lender.**

a. No cancellation, surrender and acceptance of surrender, modification or amendment of the Agreement shall be binding upon any Lender, or affect the lien of its Lender Mortgage, without the prior written consent of the Lender (which shall not be unreasonably withheld), except for any termination of the Agreement by the Township as a result of an Event of Default by Redeveloper, beyond the expiration of any applicable notice or cure period.

b. At the same time it serves notice to the Redeveloper of an Event of Default pursuant to the provisions of this Agreement, the Township shall serve a copy of such

notice upon each Lender in the manner contemplated by this Agreement, provided that Redeveloper provides the Township with written notice of all Lenders. Each such Lender shall (insofar as the rights of the Township are concerned), have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy and diligently proceed to cure or remedy, any such default which is subject to be cured and to add the cost thereof to the debt and lien which it holds repayment of which shall be secured by the Lender Mortgage.

c. To the extent reasonably requested by Redeveloper, the Township shall execute such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Township) as may be requested or required by any Lender; provided, however, that any such agreement or document shall not materially and adversely alter any of the rights or obligations of Redeveloper or the Township under this Agreement.

d. No Lender shall be liable for the performance of Redeveloper's obligations under this Agreement unless such Lender has succeeded to and has possession of the interest of Redeveloper under this Agreement.

e. If a Lender requires a change in the terms of this Agreement, the Township shall reasonably cooperate with Redeveloper in approving and implementing such change, so long as such change does not materially change Township's obligations or rights as set forth in the Agreement, or materially change the Project. Such changes may be approved by the Township Council.

(iv) **Lender Not Obligated to Construct.**

a. Notwithstanding any other provisions of the Agreement, a Lender shall in no manner be obligated by the provisions of the Agreement to construct or complete the Project, or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Lender. Nothing contained in the Agreement shall be deemed to permit or authorize such Lender to undertake or continue the construction or completion of the Project, without the Lender or an affiliate of Lender first having expressly assumed the Redeveloper's obligations to the Township with respect to the Project by written agreement reasonably satisfactory to the Township, except a Lender may undertake construction or completion to the extent necessary to conserve or protect the Lender's security interest in the Project and in so doing no such construction or completion shall be deemed an assumption of any of the Redeveloper's obligations whatsoever.

b. If a Lender initiates processes to foreclose its mortgage secured by the Redeveloper's interest in the Property (in its name or the name of an Affiliate) or take title to the Property by deed in lieu of foreclosure or similar transaction (collectively, a "Foreclosure"), the Lender or its Affiliate shall have the option to either (i) assign the Redeveloper's interest in the Property, as applicable, to a responsible Person reasonably acceptable to the Township, which Person shall assume the obligations of the Redeveloper



under the Agreement in accordance with Applicable Law, and/or (ii) itself, or its Affiliate, assume the obligations of the Redeveloper under the Agreement in accordance with Applicable Law. In the event of and during the pendency of a Foreclosure, the Township shall not seek to enforce any of the remedies available to the Township pursuant to the terms of the Agreement available in connection with the events preceding or during the Foreclosure. The entity assuming the obligations of the Redeveloper as to the interest affected by such Foreclosure or assignment, in that event must agree to complete the Project in accordance with the terms of the Agreement, but subject to reasonable extensions of the Redevelopment Project Schedule, and shall submit evidence reasonably satisfactory to the Township that it has the qualifications and financial responsibility necessary to perform such obligations. Any such successor entity assuming such obligations of the Redeveloper, properly completing the Project shall be entitled, upon written request made to the Township, to Certificates of Completion. Nothing in the Agreement shall be construed or deemed to permit or to authorize any Lender, or such other entity assuming such obligations of the Redeveloper, to devote the Property, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by the Agreement and the Redevelopment Plan. The Lender or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Property or Project in accordance herewith.

14. Assignment and Assumption. Subject to the terms hereof, Assignor hereby conveys, assigns and transfers to Assignee all of Assignor's right, title, interest and obligations in, to and under the Agreement effective as of the Effective Date. Assignee hereby accepts the foregoing conveyance, assignment and transfer and hereby assumes all of Assignor's right, title, interest and obligations in, to and under the Agreement, and agrees to be bound by the terms thereof. Any reference to "Redeveloper" within the Agreement shall hereafter refer to Assignee. The Township consents to the assignment of the Agreement as set forth herein.

15. Miscellaneous.

(a) As amended hereby, the Agreement is hereby ratified and confirmed to be in full force and effect. In the event any provisions of the Redeveloper Agreement are inconsistent with this Amendment, the provisions of this Amendment shall control.

(b) This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(c) If any term of this Amendment, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Amendment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Amendment shall be valid and enforceable to the fullest extent permitted by law. The titles for the articles and sections are for convenience only and not to be considered in construing this Amendment. This Amendment contains all of the agreements of the parties with respect to the subject matter hereof, and supersedes all prior dealings between them with respect to such subject matter.

(d) This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. The parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF or other e-mail transmission), which signature shall be binding on the party whose name is contained therein and shall serve as an original.

*SIGNATURE PAGE TO FOLLOW.*

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above written.

ATTEST:

ASSIGNOR:  
**PIRHL DEVELOPERS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
David Burg  
Managing Director

ATTEST:

ASSIGNEE:  
**VERONA LIHTC URBAN RENEWAL LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

TOWNSHIP:  
**TOWNSHIP OF VERONA**

By: \_\_\_\_\_  
Jennifer Kiernan, RMC  
Township Clerk

By: \_\_\_\_\_  
Joseph O. D'Arco  
Township Manager

{11997479:1}

**EXHIBIT B**  
SECOND AMENDMENT TO AND ASSIGNMENT OF AGREEMENT FOR PAYMENT IN  
LIEU OF TAXES

**SECOND AMENDMENT TO AND ASSIGNMENT OF  
AGREEMENT FOR PAYMENTS IN LIEU OF TAXES**

**THIS SECOND AMENDMENT TO AND ASSIGNMENT OF AGREEMENT FOR PAYMENTS IN LIEU OF TAXES** (this “**Amendment**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”) between **PIRHL DEVELOPERS, LLC**, a New Jersey limited liability company, and its permitted assigns (the “**Assignor**”), having its regional office at 5 Commerce Way, Suite 204, Hamilton, New Jersey 08691, **VERONA LIHTC URBAN RENEWAL LLC** (the “**Assignee**”), a New Jersey limited liability company with an office at 5 Commerce Way, Suite 204, Hamilton, New Jersey 08691, and the **TOWNSHIP OF VERONA** (the “**Municipality**”), a municipal corporation in the County of Essex, State of New Jersey, with its offices at Bloomfield Avenue, Verona, New Jersey 07044.

**WITNESSETH:**

**WHEREAS**, the Assignor and the Municipality entered into an Agreement for Payments in Lieu of Taxes dated January 9, 2020, as amended by that certain First Amendment to Agreement for Payments in Lieu of Taxes, dated September 3, 2020 (the “**PILOT Agreement**”, as amended herein the “**Agreement**”) providing for a tax exemption and payments in lieu of taxes pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq. (the “**HMFA Law**”) for the construction of an affordable housing project on Block 2301, Lots 11, 12, 14, 15, 16, 17, 19 and a portion of Lot 18, to be consolidated and designated as new Block 2301, Lot 14.01 of the official tax map of the Township of Verona (the “**PILOT Agreement**”); and

**WHEREAS**, Assignor and the Township desire to modify certain terms of the PILOT Agreement as set forth herein (this Amendment together with the PILOT Agreement, the “**Agreement**”); and

**WHEREAS**, Assignor desires to assign its right, title and interest in and to the Agreement to Assignee as of the Effective Date, and Assignee desires to accept such assignment and assume all terms, obligations, covenants, conditions and provisions binding on Assignor under the Agreement upon the terms and conditions set forth in the Agreement.

**NOW, THEREFORE**, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto agree as follows:

**1. Amendment to Paragraph 7.** Paragraph 7 is deleted in its entirety and replaced with the following:

7. Sponsor is executing this Agreement governing all rights and obligations of Sponsor and Municipality with respect to the Project and the Property. The Sponsor has the right to form one or more affiliated entities under common control with the Sponsor, including an urban renewal entity (each, a “**Permitted Transferee**”), to hold title or interest to the Project and/or the Property and develop, construct, maintain and/or operate the Project as contemplated hereunder and the

Redeveloper shall have the right to assign this Agreement in whole or in part to such Permitted Transferee, without the approval of the Municipality but upon written notice to the Municipality (a “**Permitted Transfer**”). In furtherance of and not in limitation of the foregoing, the following shall also be considered a Permitted Transfer hereunder: (i) the transfer of membership interests to an investor member(s) who will become an equity investor in Sponsor, including, without limitation, Riverside Housing Partnership II 2019, LLC and Riverside Manager, LLC D/B/A Berkadia Affordable Manager, or their respective affiliates, successors and/or assigns (an “**Investor Member**”), so long as such transfer will not result in such Investor Member having control over and the responsibility for the conduct of the business and management of the affairs of Sponsor; (ii) utility and other necessary easements to facilitate development of the Project; and (iii) the establishment of a condominium regime at the Property and the recordation of a master deed and associated documents against the Property in connection therewith, as well as a conveyance of driveways, roads, infrastructure, open space and other common property to a property owners' association, condominium association, or similar entity. In the event of a Permitted Transfer, the respective rights, duties and obligations of the Municipality shall not be diminished or modified as a result of the Sponsor’s determination to make use of such Permitted Transfers and the Permitted Transferee shall become responsible for satisfaction of the Sponsor’s duties and obligations hereunder and the Municipality shall look to such Permitted Transferee for performance of such duties and obligations. Any bonding posted by the Sponsor under the MLUL shall also be transferred and/or assigned to such Permitted Transferee upon the adoption of a Resolution of the Township Council authorizing same.

Notwithstanding anything to the contrary contained herein, the Municipality agrees that no prior approval is required for (i) the internal reorganization of the corporate or partnership structure of an Investor Member, or (ii) the exercise by any such Investor Member or its affiliates of their rights to remove the managing member, as applicable, and to designate an affiliate of such Investor Member as the interim substitute managing member of the Sponsor under the terms of Sponsor’s operating agreement, provided that the Municipality shall be given written notice of such Investor Member’s exercise of the removal and appointment right under such operating agreement, inclusive of a description of the default giving rise to such right or remedy. In addition, the consent of the Municipality shall not be required for any exercise by an Investor Member of its right to enforce any applicable repurchase requirements or options under Sponsor’s operating agreement.

Further notwithstanding anything to the contrary contained herein, the replacement of the Sponsor as a result of the foreclosure of the NJHMFA’s first mortgage or any other first mortgage lender (including the construction lender) shall not require the consent of the Municipality and shall not constitute a default under this Agreement, *provided that*, the replacement entity signs an assumption agreement that obligates it keep all the covenants and agreements contained in this Agreement and/or the Financing, Deed Restriction and Regulatory Agreement that will be recorded in connection with the NJHMFA’s first mortgage.

Except as otherwise expressly set forth herein, the Sponsor shall be without power to sell or lease (except to tenants in the ordinary course of business of operating the Project as contemplated hereunder or to an affiliated entity of Sponsor) the Property or the Project, or to affect a transfer in the managing member’s ownership interest in Sponsor which would operate as a conveyance of the Property or Project.

**2. New Paragraph 18.** The following new paragraph 18 is hereby added to the Agreement.

18. (a) Mortgage. Sponsor shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon any portion of the Property whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to any portion of the Property, except as may be specifically required for the purpose of obtaining funds in connection with the acquisition and development of any portion of the Property, including but not limited to architecture, design, engineering, entitlements, legal costs and marketing and construction of the Project; provided, however, that upon the issuance of the Certificate of Completion for the Project or any portion thereof, such prohibition shall no longer apply to the Project or such portion. Sponsor shall notify the Municipality within twenty (20) days of obtaining such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project or any part thereof (the mortgagee thereunder or its affiliate, a “Lender”). The provisions of this Agreement shall not be deemed to grant the Municipality the right to approve or review the terms of any such proposed financing. A Lender shall not be deemed to be an assignee or transferee of the Agreement or of the interests of the Sponsor under the Agreement so as to require Lender to assume the performance of, or be bound to perform, any of the terms, covenants or conditions under the Agreement other than as set forth in subparagraph (c) below.

(b) Pledge or Assignment to Lender. The Municipality acknowledges that Sponsor shall have the right to (a) pledge its interest in the Agreement to a Lender without limit as to amount and on any terms Sponsor may deem desirable, and (b) assign Sponsor's interest under the Agreement to said Lender as additional collateral for the payment of the indebtedness secured by a mortgage or similar security agreement made by Sponsor to said Lender (each such mortgage, a “Lender Mortgage”). However, subject to subparagraph (d) below, any Lender Mortgage always shall be subject and subordinate in all respects to the Agreement. The making and delivery of a Lender Mortgage shall not be deemed to constitute any assignment or transfer of the Agreement or of the interest of Sponsor under the Agreement. However, subject to the provision of this paragraph 18, a Lender may become the legal owner of Sponsor's interest under the Agreement with respect to the Property by foreclosure of its Lender Mortgage or as a result of the assignment to it of the Agreement in lieu of foreclosure or otherwise and in such event are bound by such Agreement pursuant to subparagraph (d) below.

(c) Certain Rights of Lender.

- i. No cancellation, surrender and acceptance of surrender, modification or amendment of the Agreement shall be binding upon any Lender, or affect the lien of its Lender Mortgage, without the prior written consent of the Lender (which shall not be unreasonably withheld), except for any termination of the Agreement by the Municipality as a result of an Event of Default by Sponsor, beyond the expiration of any applicable notice or cure period.
- ii. At the same time it serves notice to the Sponsor of an Event of Default pursuant to the provisions of this Agreement, the Municipality shall serve a copy of such notice upon each Lender in the manner contemplated by this Agreement,

provided that Sponsor provides the Municipality with written notice of all Lenders. Each such Lender shall (insofar as the rights of the Municipality are concerned), have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy and diligently proceed to cure or remedy, any such default which is subject to be cured and to add the cost thereof to the debt and lien which it holds repayment of which shall be secured by the Lender Mortgage.

- iii. To the extent reasonably requested by Sponsor, the Municipality shall execute such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Municipality) as may be requested or required by any Lender; provided, however, that any such agreement or document shall not materially and adversely alter any of the rights or obligations of Sponsor or the Municipality under this Agreement.
- iv. No Lender shall be liable for the performance of Sponsor's obligations under this Agreement unless such Lender has succeeded to and has possession of the interest of Sponsor under this Agreement.
- v. If a Lender requires a change in the terms of this Agreement, the Municipality shall reasonably cooperate with Sponsor in approving and implementing such change, so long as such change does not materially change Municipality's obligations or rights as set forth in the Agreement, or materially change the Project. Such changes may be approved by the Township Council.

(d) Lender Not Obligated to Construct.

i. Notwithstanding any other provisions of the Agreement, a Lender shall in no manner be obligated by the provisions of the Agreement to construct or complete the Project, or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Lender. Nothing contained in the Agreement shall be deemed to permit or authorize such Lender to undertake or continue the construction or completion of the Project, without the Lender or an affiliate of Lender first having expressly assumed the Sponsor's obligations to the Municipality with respect to the Project by written agreement reasonably satisfactory to the Municipality, except a Lender may undertake construction or completion to the extent necessary to conserve or protect the Lender's security interest in the Project and in so doing no such construction or completion shall be deemed an assumption of any of the Sponsor's obligations whatsoever.

ii. If a Lender initiates processes to foreclose its mortgage secured by the Sponsor's interest in the Property (in its name or the name of an Affiliate) or take title to the Property by deed in lieu of foreclosure or similar transaction (collectively, a "Foreclosure"), the Lender or its Affiliate shall have the option to either (i) assign the Sponsor's interest in the Property, as applicable, to a responsible Person reasonably acceptable to the Municipality, which Person shall assume the obligations of the Sponsor under the Agreement in accordance with Applicable Law, and/or (ii) itself, or its Affiliate, assume the obligations of the Sponsor under the Agreement in accordance with Applicable



Law. In the event of and during the pendency of a Foreclosure, the Municipality shall not seek to enforce any of the remedies available to the Municipality pursuant to the terms of the Agreement available in connection with the events preceding or during the Foreclosure. The entity assuming the obligations of the Sponsor as to the interest affected by such Foreclosure or assignment, in that event must agree to complete the Project in accordance with the terms of the Agreement, but subject to reasonable extensions of the Redevelopment Project Schedule, and shall submit evidence reasonably satisfactory to the Municipality that it has the qualifications and financial responsibility necessary to perform such obligations. Any such successor entity assuming such obligations of the Sponsor, properly completing the Project shall be entitled, upon written request made to the Municipality, to Certificates of Completion. Nothing in the Agreement shall be construed or deemed to permit or to authorize any Lender, or such other entity assuming such obligations of the Sponsor, to devote the Property, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by the Agreement and the Redevelopment Plan. The Lender or such other entity that assumes the obligations of the Sponsor shall be entitled to develop the Property or Project in accordance herewith.

**3. Assignment and Assumption.** Subject to the terms hereof, Assignor hereby conveys, assigns and transfers to Assignee all of Assignor's right, title, interest and obligations in, to and under the Agreement effective as of the Effective Date. Assignee hereby accepts the foregoing conveyance, assignment and transfer and hereby assumes all of Assignor's right, title, interest and obligations in, to and under the Agreement, and agrees to be bound by the terms thereof. Any reference to "Sponsor" within the Agreement shall hereafter refer to Assignee. The Municipality consents to the assignment of the Agreement as set forth herein.

**4. Full Force and Effect.** Except as amended by this Amendment, the PILOT Agreement remains in full force and effect.

**5. Counterparts.** This Amendment may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

**6. Entire Agreement.** This Amendment and the PILOT Agreement constitute the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as provided herein.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be properly executed and their corporate seals (where applicable) affixed and attested to as of the day and year first above written.

ATTEST:

ASSIGNOR:  
**PIRHL DEVELOPERS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
David Burg  
Managing Director

ATTEST:

ASSIGNEE:  
**VERONA LIHTC URBAN RENWAL LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

MUNICIPALITY:  
**TOWNSHIP OF VERONA**

By: \_\_\_\_\_  
Jennifer Kiernan, RMC  
Township Clerk

By: \_\_\_\_\_  
Joseph O. D'Arco  
Township Manager

**EXHIBIT C**

FIRST AMENDMENT TO AND ASSIGNMENT OF CONTRACT FOR SALE

**FIRST AMENDMENT TO AND ASSIGNMENT OF CONTRACT FOR SALE OF REAL ESTATE**

THIS FIRST AMENDMENT TO CONTRACT FOR SALE OF REAL ESTATE (this “**Amendment**”) is made as of \_\_\_, 2022 (the “**Effective Date**”) by and between THE TOWNSHIP OF VERONA, a public body corporate and politic and a political subdivision of the State of New Jersey (the “**Township**” or the “**Seller**”), PIRHL DEVELOPERS, LLC, an Ohio limited liability company authorized to do business in the State of New Jersey (the “**Assignor**”), and VERONA LIHTC URBAN RENEWAL LLC A New Jersey limited liability company (the “**Assignee**”). The Assignee and the Township are collectively the “**Parties**” and individually, a “**Party**”.

WHEREAS, the Township and Assignor entered into a Contract for Sale of Real Estate dated June 9, 2020, providing for the conveyance of property identified on the Township’s tax map as Block 2301, Lots 11, 12, 14, 15, 16, 17, 19 and a portion of Lot 18 (the “**Property**”) by the Township to Assignor for the construction of an affordable housing project thereon (the “**PSA**”); and

WHEREAS, the Township and Redeveloper desire to modify certain terms of the PSA (this Amendment together with the PSA, the “**Contract**”); and

WHEREAS, Assignor desires to assign its right, title and interest in and to the Contract to Assignee as of the Effective Date, and Assignee desires to accept such assignment and assume all terms, obligations, covenants, conditions and provisions binding on Assignor under the Contract upon the terms and conditions set forth in the Contract.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

A. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the PSA.

B. Amendment to Paragraph 10, Environmental Condition and Remediation. Paragraph 10 is deleted in its entirety and replaced with the following:

10. Environmental Condition and Remediation. The Township represents and warrants that, to the best of its knowledge, information and belief, the condition of the Property is consistent with the findings contained in the Phase I Environmental Site Assessment / Preliminary Assessment for Bloomfield Avenue and Pine Street, Block 2301, Lots 11, 12, 14, 15, 16, 17, Portion of 18 & Lot 19, Township of Verona, Essex County, New Jersey, prepared by EcolSciences, Inc., dated December 17, 2021; and the Phase II Investigation Results, prepared by EcolSciences, Inc., dated December 23, 2021 (collectively, the “**Investigations**”). The “**Environmental Remediation**” shall include, without limitation, the Recommendations as set forth in the Investigations. Except as otherwise set forth herein, the Township, at its sole cost and expense, shall perform (or cause to be performed) all of the Environmental Remediation, including, without limitation, installation of monitoring wells, groundwater sampling, and remediation of any PFOAs, and shall be responsible for the costs, or the reimbursement thereof,

as applicable, of any environmental investigations performed at the Property. Notwithstanding the foregoing, Buyer, at its sole cost and expense, shall perform (or cause to be performed) the capping of the Property as necessary to address the historic fill identified in the Investigations. In either instance, the Environmental Remediation shall be completed to such standards as are required by the NJDEP to use the Property for residential purposes.

C. Amendment to Paragraph 11, Purchase Option and Right of First Refusal. Paragraph 11 is deleted in its entirety and replaced with the following:

11. Purchase Option and Right of First Refusal. The Property can only be used for the purpose of constructing housing for low or moderate income persons or families or persons with disabilities. Prior to issuance of a Certificate of Completion (as defined in the Redeveloper Agreement) for the Project:

(i) if (1) Buyer closed on the syndication of tax credits with the Investor Member, and (2) an event of default under the Contract or the Redeveloper Agreement shall have occurred which remains uncured following the expiration of all applicable notice and cure periods, and (3) following which or in connection therewith, an Investor Member or a Lender assumes the Buyer's obligations hereunder or has reasonably promptly commenced the enforcement of its respective remedies on account thereof, the Township shall not terminate the PILOT Agreement or Redeveloper Agreement and the Property shall not revert to the Township, unless (x) a Certificate of Completion is not issued prior to December 31, 2025, except in the event the Property was completed in accordance with the terms of the Redeveloper Agreement prior to December 31, 2025 and the failure to issue a Certificate of Completion by such date was due to the fault or inaction of the Township, and (y) Township thereafter elects to terminate the PILOT Agreement and Redeveloper Agreement and enforce such right of reverter with no payments or reimbursements to Buyer in accordance with the terms hereof; and

(ii) if (1) Buyer has not closed on the syndication of tax credits with the Investor Member, and (2) an event of default under the Contract or the Redeveloper Agreement shall have occurred which remains uncured following the expiration of all applicable notice and cure periods, then Township shall have the right to terminate this Agreement, the PILOT Agreement and the Redeveloper Agreement in accordance with their respective terms, and upon such termination title to the Property shall revert back to the Township without any further act on the Township's part and with no payments or reimbursements to Buyer; and

(iii) if Redeveloper closed on the syndication of tax credits with the Investor Member and (1) an event of default under the Contract or the Redeveloper Agreement shall have occurred which remains uncured following the expiration of all applicable notice and cure periods and (2) following which or in connection therewith, an Investor Member or a Lender has failed to assume the Buyer's obligations hereunder or has failed to reasonably promptly commence the enforcement of its respective remedies on account thereof, then Township shall have the right to terminate this Agreement, the PILOT Agreement and the Redeveloper Agreement in accordance with their respective terms,

and upon such termination title to the Property shall revert back to the Township without any further act on the Township's part and with no payments or reimbursements to Buyer.

In the event of a reversion of the Property in accordance with the terms hereof, the Township shall take title to the Property subject to the outstanding debt on the Property. Upon such termination and reverter, the Buyer shall restore the Property to the condition it was prior to acquisition by the Buyer subject to approval by the Township.

Following the issuance of a Certificate of Completion for the Project, the parties agree that the Property shall be subject to a deed restriction requiring its use as housing for low and moderate income persons or families or persons with disabilities for a period of forty-five (45) years. If at any time thereafter the Property ceases to be used for these purposes, the Township shall have a right of first refusal to purchase the Property, including the Project (the "**Refusal Right**") for an amount equal to the fair market value of the Project improvements, which shall not be less than the outstanding debt on the Property and exit taxes, unless Buyer agrees to pay the Township for the fair market value of the land at that time.

D. Assignment and Assumption. Subject to the terms hereof, Assignor hereby conveys, assigns and transfers to Assignee all of Assignor's right, title, interest and obligations in, to and under the Contract effective as of the Effective Date. Assignee hereby accepts the foregoing conveyance, assignment and transfer and hereby assumes all of Assignor's right, title, interest and obligations in, to and under the Contract, and agrees to be bound by the terms thereof. Any reference to "Buyer" within the Contract shall hereafter refer to Assignee. The Township consents to the assignment of the Contract as set forth herein.

E. Miscellaneous.

(i) As amended hereby, the Contract is hereby ratified and confirmed to be in full force and effect. In the event any provisions of the PSA are inconsistent with this Amendment, the provisions of this Amendment shall control.

(ii) This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(iii) If any term of this Amendment, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Amendment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Amendment shall be valid and enforceable to the fullest extent permitted by law. The titles for the articles and sections are for convenience only and not to be considered in construing this Amendment. This Amendment contains all of the agreements of the parties with respect to the subject matter hereof, and supersedes all prior dealings between them with respect to such subject matter.

(iv) This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same

document. The parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF or other e-mail transmission), which signature shall be binding on the party whose name is contained therein and shall serve as an original.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first above written.

ATTEST:

ASSIGNOR:  
**PIRHL DEVELOPERS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
David Burg  
Managing Director

ATTEST:

ASSIGNEE:  
**VERONA LIHTC URBAN RENEWAL LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

TOWNSHIP:  
**TOWNSHIP OF VERONA**

By: \_\_\_\_\_  
Jennifer Kiernan, RMC  
Township Clerk

By: \_\_\_\_\_  
Joseph O. D'Arco  
Township Manager