

**SOUTH ORANGE VILLAGE**  
**Municipal Offices**  
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South Orange  
Essex County  
New Jersey 07079

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## **RESOLUTION #2021-233**

**August 17, 2021**

### **RESOLUTION APPROVING THE TRANSFER AND DEVELOPMENT AGREEMENT FOR AN AFFORDABLE HOUSING PROJECT AT 41-45 WEST THIRD STREET**

**WHEREAS**, the Township of South Orange Village (the "Village") owns property designated as 41-45 West Third Street, South Orange, New Jersey (the "Property"); and

**WHEREAS**, the Village has determined to have the Property developed for affordable housing; and

**WHEREAS**, BCUW/Madeline Housing Partners, LLC, JESPY House and PenWal Affordable Housing Corporation have offered to develop affordable housing on the Property.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Trustees of the Township of South Orange Village that:

1. The annexed Transfer and Development Agreement is hereby approved.
2. Village President is hereby authorized to execute the annexed agreement.

<b>Trustee Member</b>	<b>Motion</b>	<b>Second</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Brown		X	X			
Coallier			X			
Haskins			X			
Hartshorn Hilton				X		
Jones			X			
Zuckerman	X		X			

#### **CERTIFICATION**

I, Ojetti E. Davis, Acting Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this is a true and correct copy of the Resolution adopted by the Board of Trustees at a special meeting held on Tuesday, August 17, 2021.

  
Ojetti E. Davis  
Acting Village Clerk

Block 1902, Lots 39 and 40  
41 and 45 Third Avenue  
Township of South Orange Village, New Jersey  
Transfer and Development Agreement

This Agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between the Township of South Orange Village located at 76 South Orange Avenue, South Orange, New Jersey 07079 (“Transferor”); BCUW/Madeline Housing Partners, LLC located at 6 Forest Avenue, Suite 220, Paramus, New Jersey 07652; JESPY House located at 102 Prospect Street, South Orange, New Jersey 07079 and PenWal Affordable Housing Corporation located at 300 Frank W. Burr Boulevard, Teaneck, New Jersey 07666 (collectively “Developer”); and

WHEREAS, the Transferor is the record owner of properties located at 41 and 45 Third Avenue, designated as Block 1902, Lots 39 and 40, on the Tax Assessment Map of the Township of South Orange Village; and

WHEREAS, the Lot 39 Property and the Lot 40 Property shall hereinafter be referred to collectively as the “Property”; and

WHEREAS, the Transferor and the Developer seek to cause to be constructed and operated on the Property a housing project consisting of ten (10) affordable family units and sixteen (16) supportive/special needs affordable housing units with a total of 19 beds (the “Project”);

NOW THEREFORE WITNESSETH this Agreement that for and in consideration of the sum of One and no/100 (\$1.00) Dollar, the parties agree as follows:

1. The Transferor will convey fee simple title to the Property to the Developer for the sum of One and no/100 (\$1.00) Dollar subject to the restrictions, performance, and warranties hereinafter contained. The Deed shall contain a deed restriction guaranteeing that

affordability controls pursuant to the New Jersey Fair Housing Act (the "Act") and regulations adopted in connection therewith (the "Regs") including the Uniform Housing Affordability Controls ("UHAC" at NJAC 5:80-26.1 et seq.) and the Council on Affordable Housing ("COAH" regulations at NJAC 5:93 et seq.) shall apply to the Project. The transfer is to occur promptly after all contingencies stated below are met or waived by both parties. The Transferor shall impose a deed use restriction limiting the use of the Property by the Developer to providing ten (10) affordable family housing units for very-low, low, and moderate-income persons and sixteen (16) affordable housing units with a total of 19 beds for very-low, low, and moderate-income persons with intellectual or developmental disabilities/special needs. The Deed shall also reference this Agreement and shall be recorded with it. Nothing in this Agreement shall preclude the parties from agreeing to provide additional affordable units on the Property as part of a future amendment of the Agreement agreed to by both parties.

2. Upon receipt of a fully signed copy of this Agreement, Developer will seek financing for the construction of the Project that will be subject to, and comply with, licensing and regulations for affordable residences as well as for disabled persons as supervised by New Jersey State agencies regarding the affordable and supportive housing units. This Agreement is contingent upon Developer obtaining a financing commitment from governmental or institutional sources, including, but not limited to, such entities as the New Jersey Housing and Mortgage Finance Agency ("NJHMFA"), Bergen County HOME and various block grants, for the construction of the Project within two (2) years from the date of this Agreement, subject to extension for delays beyond Developer's control, including, but not limited to, acts of God, pandemic, and delays caused solely by the action or inaction of any such lender. In the event such financing commitment is not timely obtained, either party may elect to terminate this

Agreement on thirty (30) days prior written notice delivered to the other party provided that, within the written notice period, Developer may elect to waive the financing contingency and proceed to Closing. In the event the Agreement is terminated, the Transferor may continue to work with JESPY House to provide housing units on the Property for very-low, low, and moderate-income persons including persons with intellectual or developmental disabilities/special needs.

(a) Pursuit of financing may require environmental testing and reports satisfactory to the financial agency. Transferor shall perform all tests and remediation necessary to satisfy the financial agency.

(b) The Transferor agrees that, upon request of a construction mortgage or permanent financing lender, the Transferor will subordinate a statutory right of reverter applicable to the Property as a result of the transfer in order to facilitate the construction and permanent financing. The Property shall remain subject to a use restriction limiting the use of the Property to very-low, low, and moderate-income persons including supportive housing for intellectually or developmentally disabled persons, unless the Transferor agrees to a different use of the Property in writing.

3. In addition to the substantial sums expended by the Transferor in acquiring the Property, the Transferor shall pursue a spending plan approval from the applicable governmental agency or New Jersey Superior Court to permit a portion of the Transferor's Housing Trust Fund to be released and paid to the Developer for purposes of the \$45,000.00 HMFA loan commitment fee. Upon closing of the equity syndication, the Transferor shall be reimbursed that sum.

4. Promptly upon receiving a fully signed copy of this Agreement, Developer will apply for approvals for construction of the Project and a building permit through the Transferor's municipal agencies and the agencies of the State of New Jersey including, but not limited to, the New Jersey HMFA and the New Jersey Department of Human Services. The Developer will diligently prepare, file and pursue approvals of site plan applications, obtaining building permits, and thereafter pursue the erection and completion of the Project. If required by any Board or agency reviewing the site plan, Developer shall enter into a mutually agreeable developer's agreement concerning the construction of the Project. In the event final site plan approval for the Project is not obtained and a building permit issued within thirty (30) months of this Agreement being fully signed, the Transferor may elect to terminate this Agreement by written notice delivered to the Developer. The parties may agree to extend this period if the Developer's applications are pending, but not final.

5. The conveyance of the Property is subject to:

A. Transferor obtaining final, non-appealable, certification of its affordable housing obligation from the New Jersey Superior Court, or any superseding agency having jurisdiction over the Transferor's spending plans for affordable housing within six (6) months from the date hereof. The parties may agree to extend this contingency period if approval of the Transferor's third round certification is pending, but not final.

B. Transferor is in the process of acquiring a property adjacent to the Project, whereon it shall provide twelve (12) parking spaces to the Developer pursuant to a thirty (30) year lease agreement. In addition, three (3) spaces on West Third Street in front of the Property shall be restricted, one (1) for a handicapped occupant and two (2) for JESPY House staff.

6. Closing shall occur promptly after the financing and certification contingencies have been met or waived and a building permit has been issued. The transfer shall be by bargain and sale deed with covenants against grantors acts.

7. Once construction financing has been obtained and once building permits have been issued, the Developer agrees to make all efforts to complete the construction of the Project within thirty-six (36) months. The thirty-six (36) month period shall be subject to extension for delays beyond the Developer's control including, but not limited to, acts of god, adverse weather conditions, unavailability of materials from anticipated sources of supply, labor difficulties, pandemic, and physical conditions discovered on the Property not anticipated by the Transferor or the Developer related to environmental conditions.

8. The Developer shall be permitted to place upon the Property title liens and encumbrances required by financing sources, NJHMFA, or the New Jersey Department of Human Services such as deed restrictions limiting use of the Property for the Project and financial liens.

9. The Developer represents and warrants to the Transferor that:

(a) The Developer is qualified to manage the construction of the Project and is experienced in obtaining New Jersey State funding for projects of the nature of the Project undertaken pursuant to this Agreement.

(b) Once the Project is completed and an unconditional certificate of occupancy is issued, the Developer will cause the Project to be operated by a person or entity that is properly and continuously licensed to operate such projects in compliance with the regulations applicable to the Project.

(c) Each of the entities comprising the Developer is a valid and existing organization created and domiciled in the State of New Jersey and is authorized to do business in the State of New Jersey including the construction of projects such as the Project contemplated by this Agreement.

(d) Each of the entities comprising the Developer is recognized by the Internal Revenue Service as a Section 501(c)(3) charitable organization.

10. The Property shall be conveyed subject to a deed containing a right of reverter of title to the Transferor in accordance with N.J.S.A 40A:12-21 upon a default under this Agreement provided the Transferor shall provide prior written notice to the Developer of not less than thirty (30) days stating the claimed default and providing the Developer with the opportunity to cure the claimed default within the said thirty (30) day period. Should the Developer undertake to cure the default and diligently thereafter pursue cure of the default and if such default is not be cured within the thirty (30) day notice period, the notice period shall be extended so long as the Developer continues to diligently pursue the cure. In addition to the provisions of N/J.S.A. 40A: 12-21, defaults shall occur upon the following events:

(a) All of the entities comprising the Developer cease to exist as a legal entity under the laws of the State of New Jersey as the result of any bankruptcy or similar insolvency proceeding, or forfeiture of charter;

(b) The Developer fails to obtain an unconditional certificate of occupancy for the Project that complies with building codes of the Transferor, the State of New Jersey or regulations satisfying requirements for residences for intellectually or developmentally disabled persons within the thirty-six (36) months after issuance of building permits, as extended through diligent efforts to complete construction;

(c) The Developer fails to continuously provide a person or entity licensed by the New Jersey Department of Human Services or its successors to operate the Project facility as a service provider;

(d) The Developer ceases to own and operate the Project. Developer may retain the services of an independent licensed service provider duly licensed by the New Jersey Department of Human Services;

(e) All of the entities comprising the Developer cease to be recognized as a charitable organization pursuant to Internal Revenue Code Section 501(c)(3) during construction, and, after the unconditional certificate of occupancy is issued;

(f) The Developer attempts to transfer the ownership of the Property, the Project or its obligations to construct, own and operate the Project under this Agreement without the prior written consent of the Transferor; or

(g) The Property ceases to be occupied as a residence by qualified very low, low, and moderate-income tenants who are intellectually or developmentally disabled and in need of supportive housing in compliance with the Act and the Regs.

11. In the event of a default and failure to cure resulting in the Transferor seeking to enforce the statutory reverter rights, Transferor shall accept title to the Property "AS IS" and "WHERE IS" including, but not limited to, any deed restrictions, covenants, liens, and requirements imposed as the result of NJHMFA funding of the construction and operation of the Project, or the New Jersey Department of Human Services, as well as any financial liens or encumbrances and easements granted by the Developer in pursuit of compliance with local and state site plan approvals, building permits, construction of improvements, utility company

requirements, and New Jersey Department of Environmental Protection requirements applicable to the Project.

12. To the extent permitted by state or federal laws, the service provider or the then operator of the Project shall give preference to occupancy of the Project to qualified persons who have resided in the Township of South Orange Village for not less than six (6) months prior to applying for residence.

13. In the event the reverter is implemented, the Developer, and its permitted successors and assigns, shall have no claim on the Property or against the Transferor for compensation or reimbursement of any funds expended in the construction and operation of the Project.

14. All notices with regard to this Agreement shall be in writing and delivered to the other party in the following manner:

- (a) by certified mail, return receipt requested, effective one day after mailing;
- (b) by nationally recognized overnight delivery service, effective one day after delivery to the overnight service;
- (c) by facsimile initiated between 9 A.M. and 4:30 P.M. on any business day that is not a New Jersey banking holiday followed by certified mail, return receipt requested, of a copy of the notice, effective upon initiating of the facsimile;
- (d) by any other future form of electronic communication where proof of initiating the transmission to the correct electronic address can be documented in writing which electronic notice shall be effective upon initiation; or
- (e) by personal delivery to the principal office of the party and to the person designated by that party in writing from time to time, effective upon personal delivery.

(f) Notices shall be delivered to the following persons:

(i) Notices to the Transferor shall be addressed to the Township of South Orange Village; 76 South Orange Avenue, South Orange, New Jersey 07079, Village Administrator with a copy to the Village Counsel;

(ii) Notices to Developer shall be addressed to BCUW/Madeline Housing Partners, LLC, 6 Forest Avenue, Suite 220, Paramus, NJ 07652, Attn: Thomas Toronto, Co-Manager, with a copy to Madeline Corporation, 555 Tenth Street, Palisades Park, NJ 07650, Attn: Shari DePalma, Co-Manager, with a copy to Beattie Padovano, LLC, 200 Market Street, Suite 401, Montvale, NJ 07645, Attn: Brenda J. Stewart, Esq., JESPY House, 102 Prospect Street, South Orange, New Jersey 07079, Attn: Audrey Winkler, Executive Director, with a copy to William F. Harrison, sq., Genova Burns, 494 Broad Street, Newark, New Jersey 07102 and a copy to Laury Pensa, President of PenWal Affordable Housing Corporation, 300 Frank W. Burr Boulevard, Teaneck, New Jersey 07666,.

15. This Agreement contains all of the terms and conditions of the understanding of the parties. This Agreement may only be changed by written amendment executed by all parties.

16. Transferor represents that this Agreement has been reviewed on behalf of the Transferor and the execution of this Agreement has been authorized by appropriate adopted resolution of the governing body of the Transferor. The execution of this Agreement by the Managers of the Developer is duly authorized by executed resolution of the Members in accordance with the Operating Agreement.

*[End of text; signatures follow on next page]*

TOWNSHIP OF SOUTH ORANGE  
VILLAGE

By: \_\_\_\_\_  
Sheena Collum, Village President

BCUW/MADELINE HOUSING  
PARTNERS, LLC

By: \_\_\_\_\_  
THOMAS TORONTO, Manager

By: \_\_\_\_\_  
SHARI DEPALMA, Manager

JESPY HOUSE

By: \_\_\_\_\_  
AUDREY WINKLER, Executive Director

PenWal Affordable Housing Corporation

BY: \_\_\_\_\_  
LAURY PENSA, President

