

EXHIBIT B

[FORM OF]
AGREEMENT FOR PAYMENT IN LIEU OF TAXES

South Orange Commons, HMFA #(s) 07751

THIS AGREEMENT, made this _____ day of _____, 20_____, between **BCUW/Madeline Housing Partners, LLC, JESPY House, Inc. and Penwal Affordable Housing Corporation** (collectively, hereinafter the “**Sponsor**”) and the **Township of South Orange Village**, a municipal corporation in the County of Essex and State of New Jersey (hereinafter the “**Village**”).

WITNESSETH

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

1. This Agreement is made pursuant to the authority contained in Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (N.J.S.A. 55:14K-1 et seq.) (hereinafter "HMFA Law") and a Resolution of the Board of Trustees of the Village dated _____, 20_____, (the "Resolution") and with the approval of the New Jersey Housing and Mortgage Finance Agency (hereinafter the "Agency"), as required by N.J.S.A. 55:14K-37.

2. The Project is or will be situated on that parcel of land designated as Block 1902, Lot 39 & 40 as shown on the Official Assessment Map of the Township of South Orange Village, and more commonly referred to as 41-45 West 3rd Street, South Orange, New Jersey.

3. As of the date the Sponsor executes a first mortgage upon the Project in favor of the Agency (hereinafter referred to as the "Agency Mortgage"), the land and improvements comprising the Project shall be exempt from real property taxes, provided that the Sponsor shall make payments in lieu of taxes to the Village as provided hereinafter. The exemption of the Project from real property taxation and the sponsor's obligation to make payments in lieu of taxes shall not extend beyond the earlier of: (i) thirty (30) years from the Substantial Completion of the Project, as defined below); or (ii) the date on which the Agency Mortgage is paid in full, which, according to the HMFA Law, may not exceed fifty (50) years.

4. (a) For projects receiving construction and permanent financing from the Agency, the Sponsor shall make payment to the Village of an annual service charge in lieu of taxes in such amount as follows:

- (1) From the date of the execution of the Agency Mortgage until the date of substantial completion of the Project, the Sponsor shall make payment to the Village in an amount equal to \$15,769.34, which represents the

conventional taxes currently due on Lot 40; Lot 39 is currently tax exempt (pursuant to the HMFA Law, the annual amount may not exceed the amount of taxes due on the property for the year preceding the recording of the Agency Mortgage). As used herein, "Substantial Completion" means the date upon which the Village issues the Certificate of Occupancy for all units in the Project.

(2) From the date of Substantial Completion of the Project and for the remaining term of this Agreement, the Sponsor shall make payment to the Village in an amount equal to **6.28** percent of Project Revenues.

(b) For Projects receiving permanent financing only from the Agency, the Sponsor shall make payment to the Village in an amount equal to **6.28** percent of Project Revenues from the date of the Agency Mortgage and for the remaining term of this Agreement.

(c) As used herein, "Project Revenues" means the total annual gross rental or carrying charge and other income of the Sponsor from the Project less the costs of utilities furnished by the Project, which shall include the costs of gas, electricity, heating fuel, water supplied, and sewage charges, and less vacancies if any.

(d) The amount of payment in lieu of taxes to be paid pursuant to paragraphs (a) or (b) and (c) above is calculated in Exhibit "A" attached hereto. It is expressly understood and agreed that the revenue projections provided to the Village as set forth in Exhibit "A" and as part of the Sponsor's application for an agreement for payments in lieu of taxes are estimates only. The actual payments in lieu of taxes to be paid by the Sponsor shall be determined pursuant to Section 5 below.

5. (a) Payments by the Sponsor shall be made on a quarterly basis in accordance with bills issued by the Tax Collector of the Village in the same manner and on the same dates as real estate taxes are paid to the Village and shall be based upon Project Revenues of the previous quarter. No later than three (3) months following the end of the first fiscal year of operation after (i) the date of Substantial Completion (for projects receiving construction and permanent financing) or (ii) the date of the Agency Mortgage (for projects receiving permanent financing only) and each year thereafter that this Agreement remains in effect, the Sponsor shall submit to the Village a certified, audited financial statement of the operation of the Project (the "Audit"), setting forth the Project Revenues and the total payments in lieu of taxes due to the Village calculated at **6.28** percent of Project Revenues as set forth in the Audit (the "Audit Amount"). The Sponsor simultaneously shall pay the difference, if any, between (i) the Audit Amount and (ii) payments made by the Sponsor to the Village for the preceding fiscal year. The Village may accept any such payment without prejudice to its right to challenge the amount due. In the event that the payments made by the Sponsor for any fiscal year shall exceed the Audit Amount for such fiscal year, the Village shall credit the amount of such excess to the account of the Sponsor.

(b) All payments pursuant to this Agreement shall be in lieu of taxes and the Village shall have all the rights and remedies of tax enforcement granted to Municipalities by law just as if said payments constituted regular tax obligations on real property within the

Village. If, however, the Village disputes the total amount of the annual payment in lieu of taxes due it, based upon the Audit, it may apply to the Superior Court, Chancery Division for an accounting of the service charge due the Village, in accordance with this Agreement and HMFA Law. Any such action must be commenced within one year of the receipt of the Audit by the Village.

(c) In the event of any delinquency in the aforesaid payments, the Village shall give notice to the Sponsor and NJHMFA in the manner set forth in 9(a) below, prior to any legal action being taken.

6. The tax exemption provided herein shall apply only so long as the Sponsor or its successors and assigns and the Project remain subject to the provisions of the HMFA Law and Regulations made thereunder and the supervision of the Agency, but in no event longer than the term of the Agency Mortgage. In the event of (a) a sale, transfer or conveyance of the Project by the Sponsor or (b) a change in the organizational structure of the Sponsor, this Agreement shall be assigned to the Sponsor's successor and shall continue in full force and effect so long as the successor entity qualifies under the HMFA Law or any other state law applicable at the time of the assignment of this Agreement and is obligated under the Agency Mortgage.

7. Upon any termination of such tax exemption, whether by affirmative action of the Sponsor, its successors and assigns, or by virtue of the provisions of the HMFA Law, or any other applicable state law, the Project shall be taxed in accordance with the law.

8. The Sponsor, its successors and assigns shall, upon request, permit inspection of property, equipment, buildings and other facilities of the Project and also documents and papers by representatives duly authorized by the Village. Any such inspection, examination or audit shall be made during reasonable hours of the business day, in the presence of an officer or agent of the Sponsor or its successors and assigns. This section shall not operate to limit or hinder any customary inspections applicable to all buildings, e.g., construction inspections, fire inspections, etc.

9. Any notice or communication sent by either party to the other hereunder shall be sent by certified mail, return receipt requested, addressed as follows:

(a) When sent by the Village to the Sponsor, it shall be addressed to _____ or to such other address as the Sponsor may hereafter designate in writing and a copy of said notice or communication by the Village to the Sponsor shall be sent by the Village to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.

(b) When sent by the Sponsor to the Village, it shall be addressed to the _____ or to such other address as the Village may designate in writing; and a copy of said notice or communication by the Sponsor to the Village shall be sent by the Sponsor to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.

10. In the event of a breach of this Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court, Chancery Division, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the HMFA Law.

11. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a sufficient number of counterparts to evidence the execution of this Agreement by each party hereto.

ATTEST

SPONSOR:

By: _____

By: _____

ATTEST

TOWNSHIP OF SOUTH ORANGE VILLAGE:

By: _____