

Memorandum of Understanding  
Riverfront Recapture Area  
Torrington, CT

This Memorandum of Understanding (“MOU”) is entered into as of October \_\_, 2019 by and between the CITY OF TORRINGTON, a municipal corporation (the “City”) and PENNROSE, LLC a Pennsylvania limited liability company with a principal place of business at 230 Wyoming Avenue, Kingston, Pennsylvania 18704 (together with its permitted transferees, “Developer”) regarding the proposed development of the Riverfront Recapture Area, 100 Franklin Street (117/025/001:1.4 acres) and Franklin Street (117/025/002: .62 acres), Torrington, CT (06790?) (the “Property”).

1. Background

The City issued a Request for Qualifications (the “RFQ”) seeking proposals for the development of the Property on or about March 25, 2019. Pennrose , LLC, a Pennsylvania limited liability company (“Developer”) submitted a Response to the RFQ dated April 26, 2019 (the “Proposal”), seeking to own, develop, construct and manage a mixed income, mixed use development consisting of approximately sixty (60) units of family rental housing with approximately 80% of the units affordable to households at up to 80% of the area median income adjusted for family size as well as some ground floor retail and various site improvements (“Development”).

The City selected the Developer pursuant to the RFQ pursuant to a Notice of Award dated June 5<sup>th</sup> 2019. The Developer will form, a single-purpose affiliate of the Developer, to acquire and redevelop the Property as described above.

Subject to the terms and conditions of this Agreement, the City agrees to sell and convey for \$1 and the Developer agrees to purchase and redevelop the Property and, as part consideration thereof, will construct the portion of the City’s Naugatuck River Greenway running through the property along the Naugatuck River.

2. Description of Property

The property which is the subject of this agreement (the “Property”) consists of two parcels of land situated at 100 Franklin Street, Assessor’s map 117/025/001 and Assessor’s map 117/025/002, Franklin Drive in Torrington, Connecticut which will contain approximately 2.0 acres. A plan showing the approximate boundaries of the Property is attached as Exhibit A.

3. Developer’s Commitment

- (a) Developer is responsible for devising a development plan consistent with the goals and objectives of this MOU;
- (b) Developer is responsible for securing any and all permits and approvals required for the Development;

- (c) Developer is responsible for arranging financing, closing, constructing, and managing the Development consistent with the goals and objectives of this MOU;
- (d) Developer shall use best efforts to accomplish all tasks necessary to achieve Closing;
- (e) Except as otherwise stated herein, Developer shall be solely responsible for the selection, hiring, contracting with, directing and discharging all employees, agents, and contractors that Developer utilizes in accomplishing its duties under this MOU;
- (f) Developer will provide City with all information with regard to Developer's activities under this MOU which the City reasonably requests;
- (g) Developer shall keep the City fully informed and consult with the City concerning the development of all applications for government assistance and public financing at the City's request or as Developer deems appropriate;
- (h) Developer will provide normal and customary guarantees of construction and operation of the Development to the investors;
- (i) With cooperation from the City, Developer will work diligently to pursue funding in the next available LIHTC 9% state funding round and if not successful will pursue financing through the next subsequent two rounds of such funding.

4. City's Commitment

- (a) City shall provide Developer reasonable access to the Property as well as rights of way or access easements so long as the City retains title to or control of the Property;
- (b) The City shall convey to the Developer good and marketable fee title of the Property, such interest being insurable at regular rates;
- (c) The City will provide a tax exemption/abatement for the property which will provide revenue from real estate taxes of approximately \$30,000 in the first year of the Development's completion together with increases of 3% per year for the next 14 years unless extended for an additional five years by agreement.
- (d) The City shall deliver the Property to the Developer, as a clean parcel suitable for residential development or provide Developer resources to accomplish the same;
- (e) The City shall provide Developer with copies of all reports, surveys, environmental and geotechnical investigations of the Property it has;
- (f) The City shall work with the abutting utility company property on Franklin Drive to improve their streetscape; and
- (g) The City will take reasonable actions as are necessary to support the Development, consistent with the goals for the Development, including cooperation and support on securing necessary permits and approvals. Where resources anticipated by the parties become unavailable, or if the Development ceases to be feasible as conceived, the City will work with the Developer in good faith to make changes to the plans to achieve the original goals to the maximum extent possible.

5. Term of Agreement; Conditions Precedent to Closing

This term of this Agreement (the "Term") shall extend until the earliest to occur of:

- a) Closing;
- b) Termination by either party pursuant to the terms of this Agreement;
- c) Eighteen months after the Developer secures an award of low-income housing tax credits for the Development from CHFA; or
- d) Eighteen months after the announcement of awards from the CHFA 2021 9% low-income housing tax credit funding round (assuming CHFA holds funding rounds in 2019, 2020, and 2021), regardless of whether or not the Development secures an award in such round.

The sale and purchase of the Property and payment of the Closing Payment (the “Closing”) shall take place upon no fewer than fifteen (15) days prior notice to the City (which notice shall be delivered prior to expiration of the Term) and shall be conditioned upon receipt by the City of evidence that the Developer has (or at Closing will have) the following items:

- a) Zoning approval for the development;
- b) a Building Permit or a will issue letter, as applicable, for the Development; and
- c) all necessary funds available to finance and complete the Development (which may be evidenced by commitment letters, executed equity and/or loan documents);

6. Title Inspection and Closing Documents

The Developer will cause title to the Property to be examined within one hundred twenty (120) days from the date of this Agreement (the “Title Inspection Period”). On or before the end of the Title Inspection Period, the Developer will notify the City (the “Developer’s Title Defect Notice”) of any claimed defect in title revealed by any such examination. As used in this Agreement, the phrase “defect in title” shall mean any liens, encumbrances or other matters of record that may in Developer’s reasonable determination prohibit or materially interfere with the use of the Property and the financing and development of the Project. The City shall use reasonable efforts to cure such defect in title. If the City, despite reasonable efforts, is unable to (i) cure any defect in title within one hundred twenty (120) days after receipt of the Developer’s Title Defect Notice, or (ii) provide reasonable assurances that such defect will be released, discharged or terminated of record on or prior to the Closing, then the City shall so notify Developer. On or before ten (10) days after receiving notice of the City’s inability to cure a defect in title or inability to provide reasonable assurances that such defect will be released, discharged or terminated of record on or prior to the Closing Date, or the City’s determination that it is not likely to cure such defect, or, in the event the City shall fail to give such notice, on or before one hundred twenty (120) days after the Developer’s Title Defect Notice, Developer shall notify the City that it has elected to either waive all rights to refuse to close on account of such defect in record title (each, a “Waived Title Defect”) or terminate this Agreement for infeasibility as provided in Section 8. Any liens, encumbrances or other matters of record as of the date of the Developer’s Title Defect Notice, and any Waived Title Defect shall collectively be referenced in this Agreement as “Permitted Encumbrances.”

At Closing, the City shall convey the Property by a good and sufficient **Special** Warranty deed running to the Developer **that shall warrant the City is lawfully seized of the premises in fee simple and that it has good right and lawful authority to sell and convey and shall warrant and defend the same against the lawful claims of all persons claiming by, through or under the City** ~~and said deed shall convey a good and clear record and marketable title, free from encumbrances except for~~ **and shall convey subject to** Permitted Encumbrances.

The City shall also provide evidence of the authority of the City to deliver the deed and of the party executing the deed to do same on behalf of the City, an affidavit verifying that there are no parties in possession or other persons entitled to rights of possession of the Property and any other documentation reasonably requested or as shall be reasonably necessary or desirable to carry out the terms of this Agreement.

The acceptance of the deed by the Developer and the Closing Payment by the City shall be deemed to be the full performance and discharge of every agreement and obligation of the parties under this Agreement, except such agreements and obligations which are, by the terms hereof, expressly intended to survive after the Closing.

Any and all actions undertaken by the Developer in accordance with this Agreement shall be done in full compliance with all applicable local, state and federal laws, rules and regulations.

7. License

The City hereby grants Developer and its agents a license to enter the Property to conduct all inspections and testing it deems necessary or desirable provided (1) that the City is given at least 48 hours advance notice, in writing, where feasible, or such shorter oral notice as it reasonably consents to, including a description of any testing, and (2) that all inspections and testing will be conducted in compliance with all applicable laws and regulations with due respect of the privacy and safety of its residents

Developer shall, at its expense, restore any land disturbances or otherwise provide remediation for the activities of Developer or its agents, consultants or contractors on the Property in the event Developer fails to take title to the Property. Developer waives in advance all claims for injury or damages and agrees to fully and completely indemnify, defend and hold harmless the City and its employees, agents, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of, caused by, or resulting from the Developer's purchase of and/or any work or action performed by the Developer, its agents and contractors on the Property related to the purchase of the Property. Access shall be limited to weekdays between 8:00 a.m. and 5:00 p.m. with notice to the City in advance: additional hours of access may be provided with written approval from the City.

8. Default and Right to Terminate:

Each of the following shall constitute Developer's default and grounds for City to terminate this Agreement:

- a) Developer's refusal or failure to perform any material obligation imposed upon it by any provision of this Agreement provided that the City shall have given written notice to Developer and thirty (30) days have elapsed without Developer's taking remedial action reasonably satisfactory to City.
- b) Developer's filing for voluntary bankruptcy or reorganization, Developer's legal dissolution or formal cessation of business, the filing of an involuntary bankruptcy or other creditor's proceeding against Developer or Developer that is not dismissed stayed or vacated within ninety (90) days.

Developer may terminate this Agreement upon ninety (90) days prior written notice to City if Developer reasonably determines that the Development is not feasible. Developer shall meet and confer with the City following delivery of any such notice to discuss the reasons for such determination and shall consider in good faith any proposed changes or alternative plans to preserve feasibility prior to the termination of this Agreement.

9. Miscellaneous:

A. No officer, director, employee, agent, official or representative of either party shall have or be subject to personal liability with respect to any obligation or liability under this Agreement. It is acknowledged and understood by the parties that the representatives of the City executing this Agreement and any related documents either now or in the future are doing so in their official capacity only and not in their individual capacity. The provisions of this Section shall specifically survive delivery of the deed or earlier termination of this Agreement.

B. The Developer expressly warrants and represents to the City that:

- i. The Developer is a Pennsylvania limited liability company, validly existing, with full right, power and authority to make, execute, deliver and perform this Agreement; and
- ii. The person executing this Agreement on behalf of the Developer is duly and validly authorized to do so.

- C. Any and all notices shall be deemed given if (i) delivered by hand, or (ii) sent by certified or registered mail, postage pre-paid, or delivered in a manner by which civil process may be served, if delivered/addressed as follows:

To the City: City of Torrington  
ATTN: Elinor Carbone, Mayor  
102 Central Street  
Torrington, CT 06790

With a copy to:

To the Developer:  
Pennrose LLC  
230 Wyoming Avenue, Kingston, PA 18704  
Attn. Mark H. Dambly

With a copy to:  
Berman Indictor LLP  
Attention: Jeanine H. Dankoff  
2.0 University Place  
30 North 41st Street - Suite 450  
Philadelphia, PA 19104

- D. The Developer shall not assign its rights and obligations under this Agreement without the prior consent of the City, provided however, that an assignment to an affiliate organization controlled by the Developer shall be approved upon the presentment of satisfactory evidence to the City that the affiliate is controlled by the Developer. Accordingly, all references to Developer above include such Assignee.
- E. Neither party shall record this Agreement or a memorandum or notice of this Agreement.
- F. This Agreement, executed in multiple originals, is to be construed as a Connecticut contract and is to take effect as a sealed instrument. If any provision of this Agreement shall to any extent be deemed invalid, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect as if such invalid provision were never included in this Agreement, if the remainder would continue to conform to the requirements of applicable law. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Agreement may not be cancelled, modified or amended except by a written instrument executed by both the City and the Developer.

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

CITY OF TORRINGTON

PENNROSE, LLC

By: \_\_\_\_\_  
Elinor Carbone, Mayor

By: \_\_\_\_\_  
Timothy I. Henkel, Senior Vice President

EXHIBIT A

Plan of Property





# 100 Franklin St Multi-Use Development



# This development is consistent with the City's Plans

A Mixed-Use Affordable Housing Development is consistent with City Plans that have been developed through the years, all through a very public process.

- ▶ 2009 MDP – Master Plan
- ▶ 2009 POCD
- ▶ 2014 ELUR
- ▶ Incentive Housing Overlay Zone
- ▶ Naugatuck River Greenway Master Plan

# 100 Franklin Street has it's challenges

- ▶ 2014 estimates of \$2.1 Million in contamination to clean entire parcel to meet State of CT RSR's for residential standards
- ▶ 500 Year Flood Plain
- ▶ Abuts 100 Franklin Dr, an even more blighted & contaminated property
- ▶ Abuts Eversource's Transmission Yard (noise & unsightly infrastructure)
- ▶ Narrow, odd shaped lot making it difficult to site a building
- ▶ ELUR, tied to grant funds

**Property is approximately \$1.7M below Market Value**

# What is being proposed?

- ▶ Mixed – use
  - ▶ 60 Residential units
  - ▶ 1,145 SF of Commercial Space
- ▶ Naugatuck River Greenway
- ▶ 72 Car Parking Lot
- ▶ Underground Utilities
- ▶ Street Lighting
- ▶ Landscaping/Streetscape
- ▶ Mixed – Income / Proposed rent
  - ▶ Market Rate
    - ▶ 8 - 1 bedroom \$1,200/month
    - ▶ 7 - 2 bedroom \$1,450/month
  - ▶ 70% Median Income (\$56,000 - \$82,000)
    - ▶ 1 – 2 bedroom \$1,305.00/month
    - ▶ 2 – 3 bedroom \$1,583/month
  - ▶ 60% Median Income (\$50,000 - \$70,000)
    - ▶ 3 - 2 bedroom \$1,163/month
    - ▶ 3 - 3 bedroom \$1,321/month
  - ▶ 50 % Median Income (\$35,000 - \$60,000)
    - ▶ 7 -1 bedroom \$ 792/month
    - ▶ 16 - 2 bedroom \$936/month
    - ▶ 1 - 3 bedroom \$1,058/month
  - ▶ 25% Median Income (max income \$17,675)
    - ▶ 12 - 1 bedroom \$319.00/month

# Why this development

- ▶ Complies with ELUR – Mixed Use & Greenway
- ▶ Incentive housing overlay zone
- ▶ Put more feet on the street to support local businesses
- ▶ Helps to establish the Market for downtown living
- ▶ Creates public spaces: Greenway, Plaza & Community Room
- ▶ Passive House Certification
- ▶ Market Study says Torrington can support an additional 288 Units



# Benefit/Cost Analysis & Other Impact Analysis

## Cost / Benefit Analysis

- ▶ Personal Property Tax
  - ▶ Commercial Space
    - ▶ Pennrose Office
    - ▶ 1,145 SF of Commercial Space
- ▶ Motor Vehicle Tax
- ▶ Increase Property Values of Nearby properties
- ▶ Construction of the Greenway
- ▶ Partnership in Brownfield Remediation
- ▶ New Jobs

## Impact Analysis on Education

- ▶ Research
  - ▶ Rutgers Edward J. Bloustein School of Planning and Public Policy Study (Nov. 2018).
    - ▶ Data on residential demographic multipliers that profiles household size and school-aged children (SAC) based on number of bedrooms.
    - ▶ Estimated impact is fewer than 29 students, distributed among three schools levels (elementary, Middle and High School).
    - ▶ Consideration must be given to the families that relocate from within district. Even if 50% of SAC are new to district impact is less than 5 students at each school level.
- ▶ Anecdotal Information Provided based on Impact to Meriden's School District
  - ▶ 75 Units resulted in 41 Students, of which a considerable number already lived in the district.
  - ▶ Students are distributed among elementary school, Middle School and High school.
  - ▶ Total enrollment in Meriden School District went down from 2017 to 2018, when Meriden Commons opened.

# Why Pennrose

- ▶ Reputable Developer

- ▶ Pennrose named as “Top 50 Affordable Housing Developer in 2017”
- ▶ “West Turner Residence Earns Passive House Certification”

- ▶ Pennrose will also be the Management Company

- ▶ “Pennrose Management Company Earns Professional Accreditation”
- ▶ “Pennrose Properties Designated as Resident Satisfaction Award Winners”

- ▶ On Site Management

- ▶ Involved with the Community

- ▶ “Pennrose Foundation Announces Recipients of Higher Education Scholarships”
- ▶ “Pennrose Completes Children’s Book Drive to Benefit Residents”
- ▶ “Pennrose Launches Nonprofit Charitable Foundation”

# How do we help make this happen

- ▶ Development of a parcel, such as 100 Franklin Street, requires a public/private partnership (3P): Private Developer, Municipality & State
- ▶ As a partner Tax Incentives are part of the package, with all due consideration given to the return on our Investment
- ▶ Options for Tax Incentives
  - ▶ CT General Statute 8-215 - Allows for tax abatement for affordable and low income housing
  - ▶ CT General Statutes 12-65 – Allows for a fixed assessment for a 15-year period of Time for a housing development

**No Tax Incentives = No development**



# How do we make this Happen

- ▶ The CHFA application is extremely competitive – in fact DOH capped awards to \$4M per development and no guarantee of future funds.
- ▶ In order to be competitive there is an expectation that the City provide tax incentives that make this development feasible. we are a partner in this development for the CHFA Application
- ▶ For this application to be given serious consideration by CHFA it is necessary to establish a tax incentive that establishes a base line tax of \$30,000 in year 1 with a 3% escalation over a 15 year period of time with a potential for a 5 year extension.

**No Tax Incentives = No development**

# Comparison of revenue/benefits to City over 15 years

	Current/ left undeveloped	Year 1 Annual 3% growth 2020	\$6.7M Development in 5 years \$216,537/yr.. 46.17 MR 2025	\$6.7M Development in 10 years \$216,537/yr.. 46.17 MR 2030
Property Taxes Received	0	\$609,757.94	\$2,165,370	\$1,082,685
Est. Motor Vehicle Taxes (20 cars)	0	\$202,500	135,000	67,500
Personal Property Taxes (\$300,000)	0	207,765	138,510	69,255
Increased property values for neighboring properties (+5%)	0	\$41,115	27,410	13,705
Remediation	0	Grant Funded	\$-1,100,000	\$-1,100,000
Greenway	0	\$500,000	-500,000	-500,000
New Jobs	0	30-60 permanent	?	?
Revenue/benefit to City over 15 years	0	\$1,561,137	866,290	-366,855

# 15 year tax incentive

Year 1 = Approximately \$30,000 W/ 3% annual growth – Assuming Mill Rate 46.17 all years

Property Tax received over 15-Year period	\$609,757
Motor Vehicle Taxes over 15 years 20 cars @15,000 each ~ 45 Mill Rate	\$202,500
Personal Property Taxes over 15-year period \$300,000/ Year ~ 46.17 Mill Rate	\$207,765
Increase in Abutting Property Values Over 15 years (Abutting & Across St. only) Current Assessed Value \$1,187,440 5% Increase = \$2,741/yr.. tax increase for 20 years	\$41,115
Remediation – Working W/ Developer for most efficient clean up	Grant Funded
Construction of Greenway	\$500,000
Revenue/benefit to City over 15 years	\$1,561,137