

**MEMORANDUM OF UNDERSTANDING  
AND MUTUAL COOPERATION AGREEMENT**

This Memorandum of Understanding and Mutual Cooperation Agreement ("MOU") is entered into this 28<sup>th</sup> day of September, 2015 by and among PENNLEY PARK SOUTH, INC., a Pennsylvania corporation ("PPS" or the "Developer"), the CITY OF PITTSBURGH ("CITY"), the URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH ("URA") and the PENN PLAZA TENANT COUNCIL ("PPTC"), (collectively "Parties").

**RECITALS**

**WHEREAS**, it is the mutual desire of the Parties to respect the need for "affordable housing", while encouraging the continued growth of the Greater East Liberty Area and the overall expansion of the CITY's tax base; and

**WHEREAS**, PPS is the owner of that 7.09 +/- acre parcel of real estate located in the 8<sup>th</sup> Ward of the City of Pittsburgh known as 5600 Penn Avenue, Pittsburgh, Pennsylvania 15206 (the "PPS Property"). The PPS Property is also known in the Allegheny County Office of Deed Registry as Block and Lot No. 83-N-125; and

**WHEREAS**, the PPS Property is improved by two apartment buildings known as 5704 Penn Avenue (the "5704 Building") and 5600 Penn Avenue (the "5600 Building"), which are collectively known as Penn Plaza Apartments. As of July 1, 2015, Penn Plaza Apartments housed approximately 200 residential households (collectively, the "PPS Tenants") some of whom pay "market rate rent," some of whom are "Section 8 Tenants," some of whom are elderly or disabled, all of whom are intended to benefit from the provisions of this MOU; and

**WHEREAS**, the CITY is the owner of that certain 2.28 +/- acre parcel of real estate located in the 8<sup>th</sup> Ward of the City of Pittsburgh known as Amber Street, Pittsburgh, Pennsylvania 15206 ("City Property"). The City Property adjoins the PPS Property. The City Property is also known in the Allegheny County Office of Deed Registry as Block and Lot No. 84-A-176; and

**WHEREAS**, the improvements on the PPS Property are in need of significant renovations, and, after study, Developer has proposed a mixed used retail and residential development that involves the demolition of the buildings currently located on the PPS Property (the "Proposed Development"); and

**WHEREAS**, Developer believes that the PPS Property, and the CITY, will receive the greatest economic and social benefit by proceeding with the Proposed Development in a manner that (i) provides assistance for the coordinated relocation of such PPS Tenants to replacement housing, and (ii) involves commitments to affordable housing, MWBE participation, and the creation of a local economic development district to capture tax increment from the Proposed Development and complementary development sites to support infrastructure and affordable housing investments in the Greater East End Area; and

**WHEREAS**, the PPTC has raised a number of concerns regarding the Proposed Development, including the need to minimize displacement of the over 200 PPS Tenant households, the hardships of displacement and the continuing loss of housing that is affordable to low income and working families in East Liberty; and

**WHEREAS**, representatives of the Parties have held a number of meetings to discuss the various issues and to seek an amicable resolution of the same; and

**WHEREAS**, the URA has proposed to create an East Liberty Affordable Housing Fund (the “East Liberty Housing Fund”) to invest in affordable housing in the greater East Liberty TRID district, which includes the location of the PPS property; and

**WHEREAS**, the Parties desire to further collaborate toward the implementation of the goals as outlined herein; and

**WHEREAS**, the Parties also desire to memorialize their understandings regarding the Proposed Development related to “affordable housing”, tenant relocation, tenant reestablishment, the City Property, infrastructure, improvements, and zoning.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, the Parties agree to the following:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated herein.
2. **Transition and Relocation of Existing Tenants.** The Parties hereby agree to the following commitments with regard to the transition and relocation of existing PPS Tenants in the improvements located on the PPS Property:
  - a. The Developer agrees to develop the PPS Property in phases in order to minimize the impact of the Proposed Development on the PPS Tenants. As such, the Developer agrees that it will not demolish the 5704 Building before February 28, 2016, and that it will not demolish the 5600 Building before March 31, 2017.
  - b. The Developer will promptly provide written notice to all of the PPS Tenants that explains in lay terms the basic principles of this MOU, that Developer will be renewing their leases when the same expire only temporarily such that demolition of the property may commence on the dates set forth in Paragraph 2.a, and encouraging such tenants to make contact with the CITY’s designated relocation personnel. The Parties will cooperate to jointly draft such notice.
    - i. The Developer shall make space available in the improvements located on the PPS Property for the CITY’s designated relocation personnel, including, but not limited to, representatives of the Housing Authority of the City of Pittsburgh, to meet with the existing PPS Tenants and to allow such tenants to receive advice and assistance with regard to their transition and relocation from the PPS Property. Developer shall make this space available at no cost to the CITY.
    - ii. Developer shall direct any calls that it receives from the PPS Tenants to the CITY’s designated relocation personnel, who will assist the existing PPS Tenants in relocating to comparably affordable relocation units in the East Liberty area, or in other areas of comparable amenities and services if preferred by Tenants, and otherwise assist in their transition and relocation from the PPS Property. The CITY will identify, in partnership with PPTC, and hire a relocation consultant. The CITY will develop and implement a basic relocation plan agreeable to PPTC and will work in good faith to satisfy legitimate concerns and proposals of PPS Tenants and the PPTC with regard to relocation issues.

iii. Upon written request from the CITY, Developer agrees to extend the expiration of an existing tenant's lease in the 5704 Building in thirty (30) day intervals from the date of the lease's expiration, (provided that such extended expiration date is not beyond February 28, 2016) in the event that such existing tenant is unable to find suitable replacement housing prior to the expiration of their lease.

iv. The Developer will make a minimum of twenty (20) units available in the 5600 Building for the temporary relocation of tenants from the 5704 Building. In addition, the Developer will use commercially reasonable efforts to make serviceable units in the 5600 Building, which become vacant as a result of tenant departures, available as a relocation option for PPS Tenants from Building 5704. The PPTC shall provide the Developer and the CITY with a priority list setting forth the criteria for ranking the eligibility of the 5704 Building tenants for relocation to the 5600 Building. The Developer shall utilize the priority list in ranking the eligibility of the 5704 Building tenants for relocation to the 5600 Building so long as the applicable 5704 Building tenants are current on their rent and other charges.

v. Any tenant alleged by Developer not to be current on their rent or other charges will be given an opportunity to meet with the Developer's designated staff to dispute the allegation, and to become current on its rent and other charges prior to receipt of the first relocation payment to be made by Developer hereunder.

vi. The Developer will establish and fund a grant program, to be administered by the CITY or its designees, which will provide the following relocation assistance to the PPS Tenants:

1. For the current tenants of the 5704 Building, who are current on their rent and other charges or who become current prior to receipt of the first relocation payment to be made by Developer hereunder:

a. Subject to paragraph 2.b.v.1.b hereof, a relocation assistance payment of \$1,600.00 per unit. This payment will be made in two separate installments.

i. \$800.00 shall be paid at the time when the tenant (or tenants) requests relocation assistance and executes the necessary paperwork, which shall entitle PPS to possession of its unit on or before February 28, 2016.

ii. \$800.00 shall be paid at the time when the tenant (or tenants) move out from its unit so long as such move is accomplished on or before February 28, 2016.

b. Provided however, that in the event that a tenant of the 5704 Building moves to the 5600 Building, the \$1,600 per unit payment shall be made according to the following schedule:

i. \$535.00 shall be paid at the time when the tenant (or tenants) requests relocation assistance and executes the necessary paperwork, which shall entitle PPS

to possession of its unit in Building 5704 on or before February 28, 2016, and of its unit in Building 5600 on or before March 31, 2017.

ii. \$1,065.00 shall be paid at the time when the tenant (or tenants) move out from its unit in the 5600 Building so long as such move is accomplished on or before March 31, 2017.

2. For the current tenants of the 5600 Building, who are current on their rent and other charges or who become current prior to receipt of the first relocation payment to be made by Developer hereunder:

a. A relocation assistance payment of \$800.00 per unit. This payment will be made in two separate installments.

i. \$400.00 shall be paid at the time when the tenant (or tenants) requests relocation assistance and executes the necessary paperwork, which shall entitle PPS to possession of its unit on or before March 31, 2017.

ii. \$400.00 shall be paid at the time when the tenant (or tenants) move out from its unit so long as such move is accomplished on or before March 31, 2017.

vii. The PPS Tenants shall have the right to terminate their leases at any time without penalty, and to receive a full return of their security deposit provided that (1) the tenant is current on its rent and other charges through the date of termination; (2) the tenant has not vandalized the unit or the buildings, and (3) the tenant has not left any personal property in the unit. PPS will not withhold the return of a security deposit for normal wear and tear issues relating to the applicable unit.

3. Mellon Orchard Site. The URA will develop the Mellon Orchard Site, with an affordable housing component, in partnership with a developer the URA will identify and select through a competitive process. PPS will be invited to provide a response to any solicitation. The URA will include a representative from the PPTC on the selection/steering committee for the developer/development and will share all project-related information with the PPTC and consider in good faith the concerns and proposals of the PPTC with regard to the development. Respondents will be asked to account for and the URA will assess the reasonably available sources of subsidy and commercial feasibility of any proposals. The URA will solicit proposals for a mixed-use, mixed-income development that addresses, though not be limited to, the following items:

a. A multi-family, mixed-income residential rental portion which will ideally have: a market-rate component encompassing approximately 30% of the total units; A minimum of 20% of total units with rents set at levels affordable to households at or below 50% AMI; The balance of the units shall have rents affordable to a range of household incomes between 30% and 120% AMI, in a mix that is reasonably comparable to the income mix of households presently at the PPS Property, as determined by the designated relocation personnel.

i. For those residential units that need to be affordable to households at 30% AMI, the developer shall seek project-based Section 8 Housing Choice Voucher rental assistance from the Housing Authority of the City of Pittsburgh.

ii. The affordable housing units shall be disbursed throughout the new Mellon Orchard Site development and shall be in-service as affordable rental housing for a period of at least thirty (30) years.

iii. The rents for the income targeted housing units shall be structured so as to account for a reasonable utility allowance in the total housing costs.

b. The use of commercially reasonable efforts so that the development can be completed and ready for occupancy by or closely after March 31, 2017.

c. Subject to non-discriminatory reasonable screening and background requirements agreeable to PPTC, the current PPS tenants shall be provided with a preference on the occupancy of housing units developed within the Mellon Orchard Site. The designated relocation personnel shall maintain a master list of interested residents and shall use commercially reasonable efforts to keep the residents informed of the status of the Mellon Orchard Project.

4. Maintenance, Operational Issues and Relocation Concerns. PPS agrees that security will be maintained so long as there are units that are being occupied in either of the buildings. PPS agrees to maintain the property at decent and sanitary levels so long as there are units that are being occupied in either of the buildings. PPS agrees to have its representatives meet on a monthly basis with the PPTC to discuss any maintenance, service issues and /or relocation issues.

5. Zoning Amendments. The CITY shall cooperate with the efforts by the Developer to secure a zoning map change for the PPS Property and the City Property from their existing zoning designations to an AP designation. The DEVELOPER AND CITY shall file a request for such map change upon the execution of this MOU with the CITY, and the CITY shall promptly transmit this request to the Planning Commission so that the same can be on the Planning Commission's agenda by October 31, 2015.

6. The City Property. Within fifteen (15) days of the execution of this MOU, the CITY shall commence the process to have the City Property decommissioned and transferred to the URA. The URA and the Developer shall enter into an agreement within thirty (30) days after the execution of this MOU which provides site control to the Developer, contingent upon the URA receiving title to the City Property, subject to URA Board approval. The Developer agrees that it will pay fair market value to the URA for the City Property. The CITY shall commit any proceeds from this sale to the East Liberty Housing Fund to be deployed in a manner consistent with Section 7(b) of this MOU.

7. Utilization of Tax Increment. Developer, the URA, and the CITY agree to work with the City Council, Pittsburgh School District, and Allegheny County ("Taxing Bodies") to create a greater East Liberty and East End based LERTA District, or similar value capture instrument, ("District") which will include the PPS Property and the City Property, with the addition of other targeted development parcels in the East End in the future. The basic parameters of the proposal to be presented to the Taxing Bodies for consideration and approval shall include, but not be limited to, the following:

a. An abatement from any incremental increase in real estate taxes for a period of ten (10) years in the form of a tax credit up to a maximum amount established by each taxing body.

b. A condition for inclusion in the District that would require the property owner to make an owner payment in an amount equal to 50% of the value of the tax credit for the same time period as the abatement. This requirement would be recorded and attached to the property. The owner would remit the owner payment into a fund (“the Fund”) for the support of affordable housing programs and small business programs. The Fund will be administered by the URA.

c. Creation of an advisory board for the Fund that will include community representatives, including a representative from the PPTC, and elected officials from the East End. The advisory board shall review opportunities for investment with monies from the Fund and make recommendations of the same to the URA Board.

d. A requirement that any new development projects located within the District that involve City-owned or URA-owned land and/or seek financial assistance from the CITY or URA, beyond what they are entitled to by right, as determined by the URA, shall become part of the District.

i. Residential or mixed-use development projects within the District (other than the first phase of the Proposed Development on the portion of the PPS Property which contains the 5704 Building) shall use commercially reasonable efforts to include a portion of affordable housing at levels as determined appropriate in the findings of the City’s Affordable Housing Task Force.

ii. Commercial or mixed-use development projects within the District shall use commercially reasonable efforts to provide opportunities for small businesses.

e. The CITY and URA will determine the duration of the District and/or the maximum number of projects that can become part of the District through consultation with the Taxing Bodies.

7. Development Commitments.

a. The Developer agrees that the development on the PPS Property shall incorporate sustainable and environmentally appropriate materials and systems therein, and shall be designed taking into account LEED principles. The Developer shall keep a detailed list of the means and methods under which it has met these obligations and shall make it available to the CITY on an annual basis during the construction of the Proposed Development.

b. The Developer and the CITY acknowledge the importance of making the Proposed Development bicycle and pedestrian friendly. In furtherance of this commitment, the Developer and the CITY agree to use commercially reasonable efforts:

i. To re-establish South St. Clair Street within the Proposed Development;  
and

ii. To develop the corner of Penn and South Euclid in such a manner as to eliminate the speed lane from Penn Avenue in order to minimize traffic and bicycle and pedestrian conflicts, and the CITY agrees, if necessary, to participate in the vacation of right-of-way in order to allow such reestablishment; and

iii. To re-establish two-way traffic on South Euclid Avenue in order to allow for the orderly flow of bicycles, pedestrian, and vehicles within the surrounding neighborhood.

c. The Developer will use commercially reasonable efforts to screen any loading docks and delivery areas in such a manner so as to minimize their impacts on the adjacent streets and pedestrian ways.

d. The Developer agrees that the current PPS tenants shall be provided with a preference on the occupancy of any housing units developed onsite, subject to Developer's non-discriminatory, reasonable customary screening requirements.

e. In the event that the Developer's proposal to develop Mellon Orchard is selected by the URA, and the URA awards the right to develop Mellon Orchard solely to the Developer, the Developer agrees, subject to the availability of appropriate tax credits and gap funding, to include an affordable housing component to any residential development which it constructs on that portion of the PPS Property which contains the 5600 Building. The minimum affordable housing component averaged across the portion of the PPS Property which contains the 5600 Building and Mellon Orchard shall consist of 20% of the total residential units with rents set at levels affordable to households at 50% AMI. The Developer's commitment to implement an affordable housing component on that portion of the property which contains the 5600 Building shall expire on the earlier of (1) the URA awarding the development rights to Mellon Orchard, or any portion thereof, to any entity or individual other than the Developer, and /or (2) one (1) year from the date of the execution of this MOU.

8. MWBE Participation. Developer and the Parties agree to use commercially reasonable efforts to encourage M/WBE participation in the development of the Proposed Development and Mellon Orchard site in accordance with the current guidelines adopted by the URA and to make job and training opportunities available for PPS Tenants and other area residents consistent with the goals and principles of Federal Section 3 Program.

9. Equal Opportunity. Developer agrees that it will not discriminate against any contractors, employees, and /or vendors on the basis of age, gender, race, and /or sexual orientation.

10. Entire Agreement. This MOU constitutes the entire agreement of the Parties and may not be modified or amended except in a writing signed by all of the Parties.

11. Choice of Law \ Venue. This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to its conflict of laws principles, and the Court of Common Pleas of Allegheny County shall have exclusive jurisdiction to hear any disputes which may arise hereunder.

12. Execution in Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile or electronic (ie. PDF) transmissions of signed copies of the MOU shall be deemed to be original signatures, and binding on the Parties.

13. Severability. If any clause or provision of this MOU is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the remainder of this MOU shall not be affected thereby. In lieu of each clause or provision of this MOU which is deemed to be illegal,

invalid or unenforceable, there shall be added, as part of this MOU, a clause or provision as similar in terms to the unenforceable term as may be possible and as may be legal, valid and enforceable.

14. Authority. The Parties have the requisite power and authority to enter into this MOU and to perform the obligations hereunder. The execution, delivery and performance of this MOU and the consummation of the transactions provided for in this MOU have been duly authorized by all necessary action on their part.

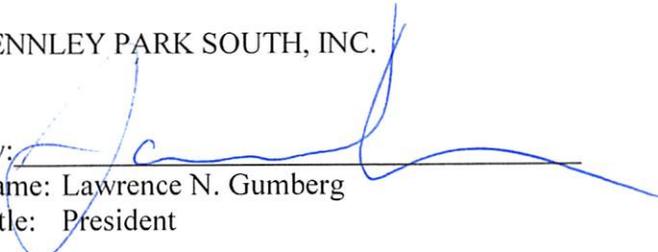
15. Successors and Assigns. This MOU shall be binding upon the Parties respective successors and assigns.

16. Agreement Fully Read and Understood. The Parties represent and warrant that they have carefully read and fully understand the terms, conditions, legal effects and intent of this MOU prior to signing the same.

IN WITNESS WHEREOF, the Parties hereto evidence their agreement and have executed this MOU as of the day and year first written above.

Date Executed: 9/28/15

PENNLEY PARK SOUTH, INC.

By:   
Name: Lawrence N. Gumberg  
Title: President

Date Executed: 9/28/15

THE CITY OF PITTSBURGH

By:   
Name: William M. Peduto  
Title: Mayor

Date Executed: 9/28/15

URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH

By:   
Name: Kevin Acklin  
Title: Chairman

Date Executed: 9/28/15

PENN PLAZA TENANT COUNCIL

By:   
Name: Lillian Grate  
Title: President