

PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT

BETWEEN

RAINIER MANOR 2, LP

AND

PRINCE GEORGE'S COUNTY, MARYLAND

THIS AGREEMENT, made this \_\_\_\_ of \_\_\_\_\_, 201\_\_, between Rainier Manor 2, LP, a limited partnership organized under the laws of the State of Maryland (the "Owner") and PRINCE GEORGE'S COUNTY, MARYLAND, a political subdivision of the State of Maryland (the "County").

WHEREAS, the Owner is a Maryland limited partnership which has or will acquire a parcel of land consisting of approximately 1.32 acres located at 3201 Buchanan Street, Mount Rainier, Prince George's County more particularly described on Exhibit A attached hereto and by reference made a part hereof (such land being hereafter referred to as the "Property") for the purpose of developing, constructing, owning, and operating thereon a rental housing community containing approximately 57 apartment units with common space amenities (the "Improvements"), all of which will assist low to moderate income seniors (the Property and the Improvements being collectively referred to as the "Project"); and

WHEREAS, the Owner will operate the Project for senior rental housing pursuant to certain regulatory agreements and restrictive covenants and declarations between the Owner and certain parties, including (i) one or more regulatory agreements between the Owner and the State of Maryland Department of Housing and Community Development ("MD-DHCD") and/or the

Community Development Administration, a unit in the Division of Development Finance of MD-DHCD (“CDA”) dated on or about the Effective Date (defined below), as the same may be amended and/or restated from time to time (collectively, the “State Regulatory Agreement”); and (ii) a Low-Income Housing Tax Credit Covenant between the Owner and CDA dated as of the Effective Date, as the same may be amended and/or restated from time to time (the “LIHTC Covenant”) (the State Regulatory Agreement and the LIHTC Covenant are hereafter collectively referred to as the “Regulatory Agreements”), which Regulatory Agreements provide for the Owner’s express agreement to continue to use a portion of the Project as housing for low to moderate income senior residents; and

WHEREAS, Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (as amended) (“Section 7-506.1”), provides, among other things, that real property outside of Baltimore City may be exempt from county property tax if (i) the real property is owned by a person engaged in constructing or operating housing structures or projects (which may include non-dwelling commercial and community facilities, community rooms, dining halls, and infirmaries to serve its occupants and the surrounding neighborhood); and (ii) the real property is used for a housing structure or project that is constructed or substantially rehabilitated under a federal, state or local government program that funds construction, or insures its financing in whole or in part, or provides interest subsidy, rent subsidy or rent supplements; and (iii) the owner thereof enters into an agreement with the governing body of the county where the real property is located for the payment of a negotiated amount in lieu of county taxes on said real property; and (iv) the owner of the real property agrees to (A) continue to maintain the real property as rental housing for lower income persons under the requirements of the governmental programs described in item (ii) of this paragraph and agrees to renew any annual contributions

contract or other agreement for rental subsidy or supplement or (B) enters into an agreement with the governing body of the county to allow the entire property or the portion of the property which was maintained for lower income persons to remain as housing for lower income persons for a term of at least five years; and

WHEREAS, the Owner represents that the Project will qualify in all respects under the provisions of said Section 7-506.1 for an agreement for negotiated payments in lieu of ordinary Prince George's County real estate taxes upon the Project; and

WHEREAS, pursuant to Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2015, the County Council of Prince George's County, Maryland, approved an agreement substantially in the form hereof for negotiated payments in lieu of taxes for the Project and authorized the County Executive to enter into such an agreement; and

WHEREAS, the County agrees to enter into an agreement for payment of a negotiated sum or sums in lieu of Prince George's County real property taxes (the "Agreement"), provided that the Owner conducts its operations in accordance with the criteria and controls set forth in said Section 7-506.1, supra; and

WHEREAS, the Owner and the County, pursuant to the power and authority of said Section 7-506.1, supra, have agreed upon a formula to determine the sum payable by the Owner to the County in lieu of Prince George's County real property taxes upon the Project.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

In consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of said Section 7-506.1, supra, it is agreed as follows:

(1) This Agreement shall become effective on the later of (i) the date of the Execution of this Agreement; and (ii) the date on which the Owner acquires the Property, (the “Effective Date”) and shall remain effective until the Termination Date (as defined in paragraph 3 below). The payments to be made by the Owner to the County, provided for herein with respect to the Project (as defined above), shall be in lieu of ordinary Prince George’s County real property taxes and special taxing district charges under the Tax-Property Article of the Annotated Code of Maryland. Such payments shall be made by the Owner and shall be accepted by the County only as long as the Owner (i) complies with the conditions of Section 7-506.1 and (ii) complies with the provisions of this Agreement.

(2) The intention of this Agreement is that the Owner’s payment in lieu of taxes for the Project shall at no time exceed the amount of County real property tax otherwise payable based on the assessment for Prince George’s County real property taxes on the Improvements, but not including State of Maryland real property taxes.

(3) Beginning on the date of “Substantial Completion” (as hereinafter defined in paragraph (4)(a)), all Prince George’s County real property taxes and special taxing district charges assessed on the Project shall be exempt through the ending of the first date on which all of the Regulatory Agreements have terminated (the “Termination Date”).

(4) (a) For the period from the Effective Date through the first July 1st following the date of “Substantial Completion” of the Project, the County’s property taxes shall continue to be due or payable with respect to the Project. “Substantial Completion” shall be the date upon which certificates of use and occupancy shall have been issued for the Project.

(b) For the period from July 1<sup>st</sup> following Substantial Completion and continuing until the Termination Date, the Owner shall make annual payments to the County for each tax

year of Twelve and One Half Percent (12.5%) of “Surplus Cash” as defined in the HUD Program Obligations, set forth in HUD’s regulatory agreement executed in connection with HUD’s insuring the First Mortgage Loan (the “HUD Regulatory Agreement”) (“Surplus Cash”). The LIHTC Partnership Agreement, Regulatory Agreement and HUD Regulatory Agreement shall be submitted by the Owner to the County’s Director of Finance within forty-eight (48) hours after execution. Each annual payment of Twelve and One Half Percent (12.5%) of Surplus Cash shall be paid by March 31st of each tax year.

(c) Beginning on the Termination Date, the Property shall no longer be exempt from County real property taxes and the Owner shall commence paying the regular County real property tax.

(d) The difference between the amounts paid under (4)(b) above and the amounts which would otherwise have been due but which are being deferred under the terms of this Agreement is referred to as the “Deferred Amount.” The Deferred Amount shall be due and payable on the refinance, (other than a HUD Section 223(a)(7), or similar interest rate adjustment refinancing, where there is no ownership change and there is no “cash out” to the Owner) sale or transfer of the property, unless prior written consent of the County is obtained.

(e) If the Property is transferred or conveyed due to a foreclosure or a deed in lieu of foreclosure, and such transfer is deemed approved, the transferee under a foreclosure or deed in lieu of foreclosure shall be assigned this Agreement and shall continue paying the annual payments as stated in Paragraph 4(b) for the remaining tax years. Beginning on the Termination Date, the Property shall no longer be exempt from the County real property taxes and the transferee under a foreclosure or a deed in lieu of foreclosure shall make all payments as stated in Paragraph 4(b).

(f) This Agreement shall terminate upon the occurrence of any of the events set forth in (f) i. through (f) iv. below, and upon termination all payments then due under this Agreement, shall be paid to the County within sixty (60) calendar days thereof. In the event that payment is not received by the County within such sixty (60) calendar days, the amount owed shall be recorded as a lien on the Property subordinate to the first mortgage loan.

i. The Property shall cease to be owned by the Owner (except as provided in Section 4(e) above);

ii. The Property shall cease to be used in accordance with the provisions of the Regulatory Agreements, and an event of default, as defined within the Regulatory Agreement, has been declared by the benefactor of the Regulatory Agreements and remained uncured by the Owner;

iii. The Owner or the Property shall cease to comply with the conditions of Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (as amended);

iv. The Owner shall fail to make any payment hereby required as and when due, which failure continues for thirty (30) days following Owner's receipt from the County of notice of such payment failure.

(5) All other taxes and fees (as applicable) as provided on the County's annual tax bill other than County taxes shall be due and payable by September 30th of each year. All payments under this Agreement shall be subject to the same interest rate, collection, and tax sale provisions of the Prince George's County Code as for the collection of County property taxes except as otherwise expressly set forth in this Agreement, provided, however, that no interest or penalties shall be assessed upon the Deferred Amount unless the Owner is in default with respect to its payment obligations hereunder.

(a) If the Owner has not paid any amount due under this Agreement within one hundred and eighty (180) days after such payment is due, the County may, at its option, declare a default by providing notice of such default to the Owner and to the holders of all mortgages or deeds of trust. If within thirty (30) days of such notice, any payments that are owed have not been brought current by the Owner or any of the Project lenders, then the County may declare all outstanding taxes due as follows: a sum equal to the total Prince George's County real property taxes which would have been due from the Owner on account of the assessed value of the Improvements in the absence of this Agreement plus all interest, if any, which shall have been charged pursuant to Paragraph 5, less all amounts actually paid under this Agreement. In order to enforce its rights under this Paragraph after the Owner has failed to bring its payments current within thirty (30) days of Owner receiving notice of its default, the County may renegotiate this Agreement, foreclose or seek any other remedy available at law or in equity (including proceeding to Tax Sale). Payments due under this Paragraph shall be considered a lien against the Property subordinate to the lien of the First Mortgage Loan.

(6) Within ninety (90) days after the date of Substantial Completion and after each December 31<sup>st</sup> thereafter the Owner shall submit to the Prince George's County Office of Finance and Department of Housing and Community Development a complete audited operating financial report, in such detail as may be required by the Prince George's Office of Finance to administer this Agreement. Said financial statement shall be based on an examination of the books and records, prepared in accordance with generally accepted accounting principles, and shall be certified and audited by a Certified Public Accountant registered to practice in the State of Maryland or with the registration authority of any other State. If the Owner has not submitted said financial statement within the time specified above, the County may, at its option, declare a

default by giving notice as provided in Paragraph 5 (a) and (if the Owner has failed to cure such default within 30 days from receipt of such notice) pursue remedies, all as set forth in Paragraph 5 (a) of this Agreement.

(7) The Owner shall not make any transfer, exchange, encumber or otherwise convey its interest in the Property except as permitted by the Regulatory Agreements. If the Owner transfers the Property to a new owner (other than a holder of a mortgage or deed of trust in the event of foreclosure or deed in lieu of foreclosure), then the Owner shall be permitted to assign this Agreement to the new owner, provided that (i) the transfer to the assignee was permitted by the Regulatory Agreements and (ii) the assignee shall be subject to the terms and conditions of this Agreement.

(8) Any document or agreement referenced hereinabove, or amendments thereto, shall be provided, with appropriate recording reference, by the Owner when executed and shall be attached to this Agreement by a subsequent addendum identifying such documents and agreements for purposes of this Agreement.

(9) This Agreement may be assigned to a holder of a mortgage or deed of trust in the event of foreclosure or deed in lieu of foreclosure under said mortgage or deed of trust, provided that the assignee shall be subject to the terms and conditions of this Agreement, and provided that the County has provided its written consent to the assignment.



IN WITNESS WHEREOF, \_\_\_\_\_, a Maryland limited partnership has caused this Agreement to be signed in its name by its Managing General Partner, \_\_\_\_\_, and PRINCE GEORGE'S COUNTY has caused its name to be signed by the County Executive, or his designee representative, and its corporate seal to be affixed, duly attested on this Agreement, on the day and year first hereinabove written.

ATTEST/WITNESS:

Rainier Manor 2, LP  
a Maryland limited partnership

By: Stavrou at Rainier 2, LLC,  
its General Partner

By: \_\_\_\_\_  
Name: Scott Link  
Title: Vice President

ATTEST/WITNESS:

PRINCE GEORGE'S COUNTY, MARYLAND

By: \_\_\_\_\_  
Name: Thomas M. Himler  
Title: Deputy Chief Administrative Officer for  
Budget Finance and Administration

REVIEWED AS TO FORM AND LEGAL SUFFICIENCY  
AND READY FOR SIGNATURE

\_\_\_\_\_  
Associate County Attorney

STATE OF MARYLAND, CITY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, before me the Subscriber, a Notary Public of the State of Maryland, personally appeared \_\_\_\_\_, who acknowledged that (s)he is the \_\_\_\_\_ of \_\_\_\_\_, a Managing General Partner of \_\_\_\_\_, a Maryland limited partnership and stated that as an officer being authorized to do so, (s)he executed the foregoing instrument for the purpose herein contained.

AS WITNESS my hand and Notarial Seal.

Notary Public  
My Commission Expires:

Witness: \_\_\_\_\_

STATE OF MARYLAND, CITY/COUNTY OF PRINCE GEORGE'S, TO WIT

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me the Subscriber, a Notary Public of the State of Maryland, personally appeared on behalf of Prince George's County, Maryland, Thomas M. Himler and he acknowledged that he is authorized to sign on behalf of the County Executive of Prince George's County, Maryland and is authorized to enter into this agreement.

AS WITNESS my hand and Notarial Seal.

Notary Public  
My Commission Expires:

Witness: \_\_\_\_\_

EXHIBIT A