

NEGOTIATED PAYMENTS IN LIEU OF TAXES (PILOT) AGREEMENT
BETWEEN
OAKCREST VILLAGE ASSOCIATES, LLC
AND
PRINCE GEORGE'S COUNTY, MARYLAND

THIS PAYMENTS IN LIEU OF TAXES (PILOT) AGREEMENT (“AGREEMENT”), is made this ____ day of _____, 2014, by and between OAKCREST VILLAGE ASSOCIATES, LLC, a limited liability company of the State of New York registered to do business in Maryland (“Owner”), and PRINCE GEORGE'S COUNTY, MARYLAND, a body corporate and politic (“County”).

WHEREAS, the Owner, proposes to acquire that certain parcel of land located in Capitol Heights, Prince George's County, Maryland, as more particularly described in Exhibit A that is attached hereto and herein incorporated by reference (“Property”) and construct 120 apartment units and related facilities thereon to provide housing for low to moderate income senior residents (“Project”); and

WHEREAS, the acquisition of the Property and construction and equipping of the Project will be financed in part through a HUD insured first mortgage loan (“HUD Loan”), the sale of low-income housing tax credits (“LITHC”) awarded by the Community Development Administration (“CDA”), an agency in the Division of Development Finance of the Department of Housing and Community Development of the State of Maryland, a loan by CDA under its Rental Housing Works program (“RHW Loan”), and a loan from Prince George's County under the U.S. Department of Housing and Urban Development's (“HUD”) HOME Investment Partnership Program.

WHEREAS, the Owner will operate the Project for rental housing on a limited distribution basis pursuant to certain regulatory agreements and restrictive covenant agreements and declarations between the Owner and certain parties in connection with the Owner's financing of the Project, including (i) one or more regulatory agreements between the Owner and CDA, as the same may be amended and/or restated from time to time (collectively, the “State Regulatory Agreement”); (ii) a HOME Regulatory

Agreement Declaration of Covenants Deed of Trust between the Owner and the County, as the same may be amended and/or restated from time to time (the “County HOME Loan Agreement”), and (iii) a Low Income Housing Tax Credit Covenant between the Owner and the CDA, as the same may be amended and/or restated from time to time (the “LIHTC Covenant”) (the State Regulatory Agreement, the County HOME Loan Agreement and the LIHTC Covenant are hereafter collectively referred to as the “Regulatory Agreements”); and

WHEREAS, Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (2012 Replacement Volume, 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 sum or sums in lieu of all local 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

WHEREAS, the Owner hereby represents that the Project qualifies in all respects, under the provisions of said Section 7-506.1, supra, for an agreement for negotiated

payments in lieu of the payment of ordinary Prince George's County real estate taxes for the Property and the Project; and

WHEREAS, pursuant to Resolution No. CR-_____, adopted on _____, the County Council of Prince George's County, Maryland, approved an agreement for payments in lieu of taxes for the Property and the Project and authorized the County to enter into this 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 ("Agreement"), provided that the Owner conducts and operates the Property and Project in accordance with the criteria and controls set forth in said Section 7-506.1, supra and as governed by all applicable local, state and federal laws; and

WHEREAS, the Owner and the County, pursuant to the power and authority of Section 7-506.1, supra, have agreed upon a formula to determine the sum payable by the Owner to the County in lieu of the payment of standard Prince George's County real property taxes for the Property and 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; or (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 the payment of ordinary Prince George's County taxes and special taxing district charges on real property under the Tax-Property Article of the Annotated Code of Maryland (2007 Replacement Volume, as amended). Such payments shall be made by the Owner in accordance with paragraphs (3) and (4) hereof and shall be accepted by the County only as long as: (i) the Project shall be owned and used for the provision of rental housing and related facilities (including parking facilities) on a limited distribution basis, pursuant to

the Regulatory Agreements; (ii) the Owner shall in all other respects comply with the conditions of Section 7-506.1, which authorizes the County to enter into this Agreement, and shall comply with all of its obligations under this Agreement.

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

(3) Beginning with the first full tax year from Substantial Completion of the Project, which is defined as the date final Certificates of Use and Occupancy shall have been issued for the Project, the Property (including the Project) located in Capitol Heights, Prince George's County, Maryland, shall be exempt from ordinary Prince George's County taxes and special taxing district charges on real property for a period of ten (10) years, ending on the earlier of ten (10) years from Substantial Completion, or upon an occurrence of any of the events set forth in paragraph (4)(e) below ("Termination Date"). The intent of this Agreement being that the Owner shall receive the benefit of the PILOT for a full ten (10) tax years once the Project is placed in operations, which is Substantial Completion for the purposes of this Agreement.

(4) (a) For the period from Substantial Completion of the Project and continuing until the Termination Date, the Owner shall make annual payments to the County for each tax year of \$175.00 per unit (\$21,000.00 annual), which shall be increased three percent (3%) per year after the first full calendar year following Substantial Completion. Each annual payment shall be paid by September 30th of each tax year.

(b) 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.

(c) The difference between the amounts paid under (4)(a) 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, sale or transfer of the property, unless prior

written consent of the County is obtained.

(d) 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(a) 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).

(e) This Agreement shall terminate upon the occurrence of any of the events set forth in (e) i. through (e) 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 HUD insured Loan.

- i. The Property shall cease to be owned by the Owner (except as provided in Section 4(d) 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 (2012 Replacement Volume, as amended);
- iv. The Owner shall fail to make any payment hereby required as and when due, which failure continues for ten (10) business days following Owner's receipt from the County of notice of such payment failure.

(5) (a) All taxes (as applicable) 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 provided the Owner has complied with the terms and conditions of this Agreement.

(b) 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 ten (10) business 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 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 this Agreement, 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 HUD Loan.

(6) The Owner shall comply with its covenants regarding the maintenance of its housing for low to moderate income persons set forth by the Regulatory Agreements and 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 (ii) the assignee shall be subject to the terms and conditions of this Agreement, and (iii) the County has provided written consent to the assignment.

(7) This Agreement shall be an obligation running with the Property and may be recorded in the land records of the County.

(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, OAKCREST VILLAGE ASSOCIATES, LLC, a New York limited liability company has caused this Agreement to be signed in its name by its member, and PRINCE GEORGE’S COUNTY, MARYLAND has caused its name to be signed by the County Executive, or his designee representative, duly attested on this Agreement, on the day and year first hereinabove written.

OAKCREST VILLAGE ASSOCIATES, LLC
a New York limited liability company

By:

By:

WITNESS

Name:

Title:

PRINCE GEORGE’S COUNTY, MARYLAND

WITNESS

By:

Thomas M. Himler
Deputy Chief Administrative Officer for
Budget, Finance and Administration

STATE OF MARYLAND, CITY/COUNTY OF _____

TO WIT:

I HEREBY CERTIFY that on this ___ day of _____, 20__ before me a Notary Public of said State of Maryland the undersigned officer, personally appeared

_____ and stated that as an officer being authorized to do so, has executed the foregoing instrument for the purposes herein contained by signing the name of Oakcrest Village Associates, LLC.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

STATE OF MARYLAND, COUNTY OF PRINCE GEORGE’S, TO WIT:

I HEREBY CERTIFY that on this ___ day of _____, 20__, before me, the Subscriber, a Notary Public of said State of Maryland, in and for Prince George’s County aforesaid, personally appeared Thomas M. Himler, Deputy Chief Administrative Officer for Budget, Finance and Administration of Prince George’s County, and he acknowledged the foregoing Agreement to be the corporate act and deed of the Deputy Chief Administrative Officer for Budget, Finance and Administration on behalf of Prince George’s County, Maryland.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

ATTORNEY CERTIFICATION:

I hereby certify that the foregoing Agreement for **Conifer Village at Oakcrest** was prepared by or under the supervision of the undersigned _____ an attorney admitted to practice before the Court of Appeals of Maryland.

By: _____

EXHIBIT A

PROPERTY DESCRIPTION

BEING a parcel of land hereinafter described, in, through, over and across the property acquired by **OAKCREST WEST, LLC**, a Maryland limited liability company from **JULIUS I. FOX**, Surviving Trustee, by deed dated June 10, 2010 and recorded among the Land Records of Prince George's County, Maryland in **Liber 31811 at Folio 051**, being more particularly described as follows:

BEGINNING for the same at a point on the westerly right of way of Brooks Drive (120' R/W), said point being South 00°13'00" West 39.00 feet from the northerly end of the South 00°13'00" West 317.00 foot plat line of Parcel Three as shown on a plat known as "**Parcel Three, Oakcrest Towers**" and recorded among the Land Records of Prince George's County, Maryland in **Plat Book WWW 76 as Plat Number 58**, said point being also in the centerline of a 70' easement for public ingress and egress, also known as Ridley Street (Private Road); thence with said centerline the following three (3) courses and distances.

1. North 89°47'00" West 90.00 feet to a point of curvature; thence.
2. 474.57 feet along the arc of a curve deflecting to the right with a radius of 381.97 feet and a chord bearing and distance of North 54°11'29" West 444.62 feet to a point of compound curvature; thence.
3. 80.93 feet along the arc of a curve deflecting to the left with a radius of 381.97 feet and a chord bearing and distance of North 24°40'09" West 80.78 feet to a point; thence leaving said 70' easement and running with the outline of the aforementioned Parcel Three the following four (4) courses and distances.
4. North 48°23'42" East 419.41 feet to a point; thence
5. South 41°10'47" East 378.12 feet to a point on the westerly right of way of Brooks Drive (120' R/W); thence with said right of way the following two (2) courses and distances.
6. 302.57 feet along the arc of a curve deflecting to the left with a radius of 580.87 feet and a chord bearing and distance of South 15°08'21" West 299.16 feet to a point; thence.
7. South 00°13'00" West 39.00 feet to the **POINT OF BEGINNING** containing 211,564 square feet or 4.8568 acres of land, more or less.