

AMENDED AND RESTATED

PILOT AGREEMENT

BETWEEN

BLADENSBURG LLLP

AND

PRINCE GEORGE'S COUNTY, MARYLAND

THIS AMENDED AND RESTATED PILOT AGREEMENT ("AGREEMENT"), made this ____ day of _____, 2012, between BLADENSBURG LLLP, a limited liability limited partnership of the State of Maryland ("Owner"), and PRINCE GEORGE'S COUNTY, MARYLAND, a body corporate and politic ("County") on behalf of the Prince George's County Department of Housing and Community Development.

WHEREAS, Park Seton Limited Partnership, a limited partnership of the State of Maryland ("Previous Owner"), owned that certain parcel of land located in Bladensburg, Prince George's County, Maryland, as more particularly described in Exhibit A that is attached hereto and herein incorporated by reference ("Property"); and

WHEREAS, the Previous Owner constructed an elderly housing project on the Property that contains approximately 101 apartment units and 1 staff unit and utilized the Property to provide housing for low to moderate income elderly residents ("Project"); and

WHEREAS, the Previous Owner operated the Project for rental housing on a limited distribution basis pursuant to a regulatory agreement between the Previous Owner and the State of Maryland Community Development Administration or other governmental authority, which was executed in connection with the Previous Owner's financing of the Project; and

WHEREAS, the Previous Owner and the County entered into a certain Agreement, dated July 6, 1994 and recorded among the Land Records of Prince George's County, Maryland in Liber No. 9695, folio 553, which agreement provided for the Previous Owner to pay to the County negotiated payment sums in lieu of the payment of ordinary real property tax assessment ("Original PILOT"); and

WHEREAS, Shelter Development, LLC, a Maryland limited liability company (“Shelter”), and the Managing General Partner of Bladensburg Development LLLP, which is the Managing General Partner of the Owner, desires that the Project continue to provide housing for low to moderate income elderly residents and in furtherance thereof, Shelter formed the Owner entity to purchase the Project from the Previous Owner, which is currently operated under management of an affiliate of Shelter, in order to qualify for an allocation of low-income housing tax credits to finance the rehabilitation of the Project; and

WHEREAS, on the Effective Date (as defined in paragraph (1) below), the Owner purchased the Property, including the Project, from the Previous Owner and 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, including (i) one or more regulatory agreements between the Owner and the State of Maryland Department of Housing and Community Development (“DHCD”) dated as of the Effective Date, as the same may be amended and/or restated from time to time (collectively, the “State Regulatory Agreement”); (ii) a regulatory agreement between the Owner and the County dated as of the Effective Date, as the same may be amended and/or restated from time to time (the “County Regulatory Agreement”), and (iii) a Low Income Housing Tax Credit Covenant between the Owner and the Community Development Administration, a unit in the Division of Development Finance of DHCD 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, the County 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 the Project as housing for low to moderate income elderly residents during the forty (40) year, ten (10) month period beginning on the Effective Date; and

WHEREAS, the Owner desires that the Project continue to benefit from the Original PILOT to ensure the financial feasibility of the Project’s planned rehabilitation

and continued provision of rental housing for the Project's low to moderate income elderly residents; and

WHEREAS, the Owner desires to assume the Previous Owner's Original PILOT and to replace the Previous Owner's Original PILOT with a new PILOT that will govern the new low-income housing tax credit project created in connection with the Owner's purchase, rehabilitation and financing of the Project; and

WHEREAS, Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland (2007 Replacement Volume, as amended), 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, or provides interest subsidy, rent subsidy or rent supplements; and is substantially completed after July 1, 1978; and (iii) the structures and facilities on the real property are governmentally controlled as to rents, charges, rates of return and methods of operation so as to operate on a nonprofit or limited distribution basis; and (iv) 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

WHEREAS, the Project was substantially completed by the Previous Owner after July 1, 1978, and thus meets the requirement described in item (ii) of the preceding recital; and

WHEREAS, the Owner hereby represents that the Project qualifies in all respects, under the provisions of said Section 7-505, supra, for negotiated payments in lieu of the payment of standard Prince George's County real estate taxes for the Property; and

WHEREAS, pursuant to Resolution No. CR-55-1994, adopted on July 7, 1994, 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 the Original PILOT; and

WHEREAS, pursuant to Resolution No. CR-_____, adopted on _____, the County Council of Prince George's County, Maryland, approved a new 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 parties desire to extend the Original PILOT by entering into this Agreement provided that the Owner conducts and operates the Property and Project in accordance with the criteria and controls set forth in said Section 7-505, 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 7-505, 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.

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 7-505, supra, it is agreed as follows:

(1) This Agreement shall become effective as of the date that the Owner acquires title to 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 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 7-505 of the Tax-Property Article of the Annotated code of Maryland, (2007

Replacement Volume, as amended), which herein authorizes the County to enter into this Agreement, and shall comply with all of its obligations under this Agreement; and (iii) the Owner shall provide to the County, or its authorized representatives, the financial information required by paragraph (6) hereof in order to ensure full and complete compliance with the terms hereof.

(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 on the Effective Date and in accordance with paragraph four (4) hereof, the Property (including the Project) located in Bladensburg, Prince George's County, Maryland, shall be exempt from ordinary Prince George's County taxes and special taxing district charges on real property for the period beginning upon the Effective Date hereof and ending on the earlier of the date on which the Project ceases to be subject to the low and moderate income requirements set forth in either the LIHTC Covenant or at least one of the Regulatory Agreements or the date on which there is a change in the use of the Project by the Owner without prior written approval of Prince George's County ("Termination Date").

(4) (a) For the period from the Effective Date and continuing until the Termination Date, the Owner shall make annual payments at the end of each calendar year (on December 31st) for that calendar year equal to the Minimum Annual Payment (as hereinafter defined). Seventy-five percent (75%) of the annual net cash flow from the operation of the Project after payment of all must-pay expenses of operation (including payment of management fees, investor servicing fees, debt service on the Senior Mortgage Loan and Required Reserves) is referred to as the "75% Cash Flow Amount." The Owner shall use the 75% Cash Flow Amount to make annual repayments on the Superior Cash Flow Loans (defined herein) to the extent required by and in accordance with the applicable loan documents, and the Owner shall then apply any remaining portion of the 75% Cash Flow Amount toward an additional annual payment to the County up to the amount of the Additional Annual Payment (as hereinafter defined). The

Additional Annual Payment required under this subparagraph (4)(a) shall be due and payable on March 31st following the end of the calendar year for which such additional payment is due.

The “Senior Mortgage Loan” shall mean, collectively, the tax-exempt bond financing provided to the Owner from the Maryland Community Development Administration (“CDA”) or other lender for a portion of its Project financing, together with any obligations of the Owner to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) under such Reimbursement and Security Agreement as the Owner may enter into with Freddie Mac relating to credit enhancement provided by Freddie Mac in support of the issuance of the tax-exempt bonds, which obligations are secured by a first and/or second mortgage(s) or deed(s) of trust on the Project (including the first or second lien mortgage or deed of trust securing Owner’s obligations under such Reimbursement and Security Agreement) (including any refinancing of such obligations). The “New DHCD Loan” shall mean the new loans provided to the Owner from CDA or the Maryland Department of Housing and Community Development for a portion of its Project financing. The “Existing DHCD Loan” shall mean the loan provided by DHCD to the Previous Owner, which loan has been assumed by the Owner on the date hereof. The “Existing County Loan” shall mean the HOME loan provided by the County to the Previous Owner, which loan has been assumed by the Owner on the date hereof. The Shelter Foundation, Inc.’s loan to the Previous Owner has been assumed by the Owner on the date hereof. The New DHCD Loan, the Existing DHCD Loan and the Existing County Loan are hereinafter collectively referred to as the “Superior-Cash Flow Loans.” The “Required Reserves” shall mean any replacement reserve, operating reserve or similar reserve required under the terms of any loan document relating to the Project financing. The “Minimum Annual Payment” shall be \$132.00 per completed apartment unit per year and the “Additional Annual Payment” shall be \$198.00 per completed apartment unit per year. The Minimum Annual Payment and the Additional Annual Payment shall each be increased two percent (2%) per year beginning in 2013.

(b) On the Termination Date, or sooner if such Project is refinanced in such a way that it is no longer restricted by government regulation relating to rents,

charges, rates of return, and methods of operation, the Owner of such Project shall make an additional payment. The amount of this additional payment shall equal (i) the total real property taxes that would have been due with respect to the period beginning on the January 1st following the Effective Date and ending on the date described in the preceding sentence, plus (ii) the deferred taxes accrued by the Previous Owner under the Original PILOT in the amount of \$218,581.00, less (iii) all amounts actually paid under this Agreement, provided, however, that such additional payment shall only be due and shall only be made to the extent of available net proceeds of a sale or such refinancing after payment of all third party Project obligations including the Senior Mortgage Loan but prior to payment of amounts owed pursuant to any other loans made to the Project (the difference between the amounts paid under clause (b) (iii) and the amounts which would otherwise have been due under clauses (b)(i) and (b)(ii) above but which are being deferred under the terms of this Agreement are collectively referred to as the “Deferred Amount”). The payments required under subparagraph (4)(a) above shall not be affected by the making of one or more payments under this subparagraph (4)(b) as a result of any refinancing and shall continue in effect for so long as this Agreement remains in effect.

(5) All taxes (as applicable) 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 or with respect to the failure by the Owner to pay the Additional Annual Payment due to insufficient amounts available from the 75% Cash Flow Amount unless the Owner is in default with respect to its payment obligations hereunder.

(6) If the Owner is in default for one hundred eighty days (180) days for any payments required under subparagraph (4)(a) of this Agreement, the County may, at its option, declare a default by providing written 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, by any

Project lender, the County shall declare all taxes due as follows: a sum equal to the total real property taxes which would have been due from the Owner in the absence of this Agreement, plus all interest, if any, which shall have been charged pursuant to Agreement, less all amounts actually paid under this Agreement. In order to enforce its rights under this Paragraph, the County may renegotiate this Agreement, foreclose or seek any other remedy available at law or in equity. Payments due under this Paragraph shall constitute a lien against the Property and such lien shall be subject and subordinate in all respects to the lien, operation and effect of the Senior Mortgage Loan.

(7) Within ninety (90) days after each December 31st, the Owner shall submit to the Prince George's County Department 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 County Department 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 after providing the Owner with thirty (30) days prior notice and an opportunity to cure the default. After such cure period, the County may pursue any and all remedies discussed herein. The Owner shall not be entitled to any cash distribution except as permitted in accordance with the Regulatory Agreements. The Owner shall not make any transfer, exchange, encumber or otherwise convey its interest in the Property except as permitted by the Regulatory Agreements. Any document or agreement referenced hereinabove, or amendments thereto, shall be provided, with appropriate recording references, by the Owner when executed and shall be attached to this Agreement by a subsequent addendum identifying such documents and agreements for purpose of this Agreement.

(8) This Agreement may be assigned to a holder of a mortgage or deed of trust in the event of a 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 in accordance with the provision of the County's express written consent.

(9) This Agreement amends and restates in its entirety the terms of the Original PILOT and as of the date hereof, the Original PILOT shall be deemed void and of no further effect (subject, however, to the Owner's obligations for taxes deferred under the Original PILOT in accordance with the terms of Section 4 above).

IN WITNESS WHEREOF, BLADENSBURG LLLP, a Maryland limited liability limited partnership caused this Agreement to be signed in its name by Shelter Development, LLC, which is the Managing General Partner of Bladensburg Development LLLP, which is the Managing General Partner of Bladensburg LLLP, and the COUNTY EXECUTIVE OF PRINCE GEORGE’S COUNTY has caused its name to be signed, and its corporate seal to be affixed, duly attested on this Agreement, on the day and year first hereinabove written.

WITNESS:

BLADENSBURG LLLP

By: Bladensburg Development LLLP,
Managing General Partner

By: Shelter Development, LLC, Managing
General Partner

By: _____
Name:
Title:

ATTEST:

PRINCE GEORGE’S COUNTY, MARYLAND

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

REVIEWED FOR LEGAL SUFFICIENCY

Office of Law

STATE OF MARYLAND, CITY/COUNTY OF BALTIMORE TO WIT:

I HEREBY CERTIFY that on this ___ day of _____, 2012, before me a Notary Public of said State of Maryland the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Shelter Development, LLC, the Managing General Partner of Bladensburg Development LLLP, which is the Managing General Partner of Bladensburg LLLP and stated that as an officer being authorized to do so, he has executed the foregoing instrument for the purposes herein contained by signing the name of Bladensburg LLLP.

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 _____, 2012, 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:

EXHIBIT A

Property

BEING KNOWN AND DESIGNATED as PARCEL 'K' (containing 223,289 square feet or 5.1260 acres) as shown on the Plat entitled, "PARCELS 'K' AND 'L' (BEING A RESUBDIVISION OF OUTPARCELS 'I' & 'J') GATEWAY CENTER", which Plat is recorded among the Land Records of Prince George's County, Maryland in Plat Book VJ No. 169, folio 85.