

PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT

BETWEEN

BLADENSBURG COMMONS LLLP

AND

PRINCE GEORGE'S COUNTY, MARYLAND

THIS AGREEMENT, made this ____ of _____, 201__, between BLADENSBURG COMMONS LLLP, a limited liability 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 liability limited partnership which has or will acquire a parcel of land consisting of approximately 7 acres located at 4200 58th Avenue, Bladensburg, 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 100 apartment units and related facilities, 90 of which units will be dedicated to providing housing for low to moderate income families (the "Affordable Project Portion") and 10 of which units are anticipated to be unrestricted and leased at market rates (the "Market Rate Project Portion," and together with the Affordable Project Portion, the "Improvements") (the Property and the Improvements being collectively referred to as the "Project"); and

WHEREAS, the Owner will operate the Project for 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 (“DHCD”) and/or the Community Development Administration, a unit in the Division of Development Finance of 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”); (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 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, 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 a portion of the Project as housing for low to moderate income residents; 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

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.

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 property taxes upon the Project; and

WHEREAS, pursuant to Resolution No. _____ adopted on _____, 201__, the County Council of Prince George's County, Maryland, approved an agreement for 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 Effective Date, the Project shall be exempt from Prince George’s County real property taxes and special taxing district charges for the period beginning upon the Effective Date and ending on 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 December 31st following the date of “Substantial Completion” (as hereinafter defined) of the Project, no County property tax or payment in lieu of tax shall be due or payable with respect to the Project; provided, however, if Substantial Completion occurs in the first six months of a calendar year,

the Owner shall make the payments provided for in paragraph 4(b) for such calendar year, prorated based on the number of days between Substantial Completion and the end of the calendar year. “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 the first January 1st following Substantial Completion and continuing until the Termination Date, the Owner shall make annual payments for the Project for each calendar year (on December 31st) equal to the Minimum Annual Payment (as hereinafter defined). Seventy-five percent (75%)¹ 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 services fees, debt service of the First 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 State Mortgage Loan and County Mortgage Loan (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) (b) shall be due and payable on March 31st following the end of the calendar year for which such additional payment is due.

“First Mortgage Loan” shall mean the 1st priority “must pay” loan to the Owner in the approximate amount of \$4,400,000 for a portion of its Project financing which is secured by a first mortgage or deed of trust on the Property (including any loan refinancing such loan). “State Mortgage Loan” shall mean the Rental Housing Program loan or loans provided to the Owner by

¹ The final percentage will be between 50% and 75%, depending upon the repayment terms of the State and County cash flow loans.

DHCD in the approximate amount of \$2,000,000. "County Mortgage Loan" shall mean the HOME loan made to the Owner by Prince George's County, Maryland in the approximate amount of \$1,500,000. (The aforesaid mortgages are hereinafter collectively referred to as the "Superior Mortgages"). "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 (i) \$140 per completed Affordable Project Portion housing unit per year plus (ii) the amount of County real property taxes that would be due with respect to the Market Rate Project Portion if this Agreement was not in effect. The "Additional Annual Payment" shall be \$218 per completed Affordable Project Portion housing unit per year. The Affordable Project Portion of the Minimum Annual Payment and the Additional Annual Payment shall each be increased by two percent (2%) per year after the first full calendar year following Substantial Completion.

(c) 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 for the Affordable Project Portion 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, less (ii) all amounts actually paid under this Agreement with respect to the Affordable Project Portion, 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 First 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 (c) (ii) and the amounts which would otherwise have been due under clause (c) (i) above but which are being deferred under the terms of this Agreement is referred to as the “Deferred Amount”). The payments required under subparagraph (4)(b) above shall not be affected by the making of one or more payments under this subparagraph (4)(c) 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 real property 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 real 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.

(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 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 31st 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, BLADENSBURG COMMONS LLLP, a Maryland limited liability limited partnership has caused this Agreement to be signed in its name by its Managing General Partner, BLADENSBURG COMMONS DEVELOPMENT LLLP, 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:

BLADENSBURG COMMONS LLLP

By: Bladensburg Commons Development LLLP,
its Managing General Partner

By: Shelter Development, LLC
its Managing General Partner

Name: _____
Title: _____

ATTEST/WITNESS:

PRINCE GEORGE'S COUNTY, MARYLAND

By: _____
Name: _____
Title: _____

REVIEWED AS TO FORM AND LEGAL SUFFICIENCY
AND READY FOR SIGNATURE

Associate County Attorney

STATE OF MARYLAND, CITY OF BALTIMORE, 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 Shelter Development, LLC, a Managing General Partner of Bladensburg Commons Development LLLP, a Maryland limited liability 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 _____, TO WIT

I HEREBY CERTIFY that on this _____ day of _____, before me the Subscriber, a Notary Public of the State of Maryland, personally appeared on behalf of _____, _____ and (s)he acknowledged that (s)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

Parcel L, as shown on the Plat of Subdivision entitled, "Parcels K and L, Gateway Center," recorded among the Land Records of Prince George's County, Maryland in Plat Book VJ No. 169, at Plat 85.