

**NEGOTIATED PAYMENTS IN LIEU OF TAXES (PILOT) AGREEMENT
BETWEEN
GLENARDEN PHASE I, LLC
AND
PRINCE GEORGE’S COUNTY, MARYLAND**

THIS NEGOTIATED PAYMENTS IN LIEU OF TAXES (“PILOT”) AGREEMENT (“Agreement”) is made this ___ day of _____, 2017, by and between GLENARDEN PHASE I, LLC, a Maryland limited liability company (“Owner”), and PRINCE GEORGE’S COUNTY, MARYLAND, a body corporate and politic (“County”).

WHEREAS, the Owner proposes to acquire a certain parcel of undeveloped property located on 6.89 acres of land with the street address of 8405 Hamlin Street, City of Glenarden, Maryland, 20706, and more particularly identified by parcel account number xxxxxxxxxxxxxxxx as identified by the Maryland State Department of Assessments and Taxation, and as more particularly described in Exhibit A that is attached hereto and herein incorporated by reference (“**Property**”), and proposes to newly construct on the Property one-hundred fourteen (114) multifamily residential apartment units and related facilities (“**Improvements**”), of which eighty-seven (87) units will be dedicated to providing housing for low to moderate income residents (the “**Affordable Project Portion**”) and forty-six (46) units within this Affordable Project Portion will be specifically dedicated to seniors age 62 years old and older (the “**Senior Project Portion**”), and twenty-seven (27) units are anticipated to be unrestricted and leased at market rates (the “**Market Rate Project Portion**”) (the Property and the Improvements collectively referred to herein as the “**Project**”); and

WHEREAS, the acquisition of the Property and construction and equipping of the Project will be financed in part through (i) a mortgage loan made by Capital One Bank, N.A (“**First Loan**”), (ii) the investment of investor member equity provided in connection with /9% Low-Income Housing Tax Credits (“**LIHTC**”) awarded by the Community Development Administration (“**CDA**”), a unit of the Division of Development Finance of the Department of Housing and Community Development of the State of Maryland, (iii) a loan by CDA under its Partnership Rental Housing Program (“**PRHP Loan**”), and (iv) a contribution from the County (“**County Support**”), which, with the First Loan and PRHP Loan shall collectively referred to herein as the “**Loans**”; and

WHEREAS, the Owner will operate the Project for rental housing 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 restrictive covenants between the Owner and the United States Department of Housing and Urban Development (“**HUD**”), as the same may be amended and/or restated from time to time (collectively the “**HUD Regulatory Agreement**”); (ii) one or more regulatory agreements between the Owner and CDA, as the same may be amended and/or restated from time to time (collectively referred to herein as the “**State Regulatory 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 (“**LIHTC Covenant**”) (the HUD Regulatory Agreement, the State Regulatory Agreement, and the LIHTC Covenant are collectively referred to herein 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 and municipal corporation tax if: (a)(2)(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, which are collectively referred to herein as “**Service Facilities**”); (a)(2)(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 (a)(2)(ii)(1) funds construction, or insures its financing in whole or in part, or (a)(2)(ii)(2) provides interest subsidy, rent subsidy or rent supplements; (a)(2)(iii) the owner thereof enters into an agreement with the governing body of the county and, where applicable, the municipal corporation where the real property is located, wherein such parties agree that the owner shall pay a negotiated amount in lieu of the applicable county or municipal corporation tax; (a)(2)(iv) the owner of the real property (a)(2)(iv)(1)(A) agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the governmental programs described in (a)(2)(ii) of this paragraph and (a)(2)(iv)(1)(B) agrees to renew any annual contributions contract or other agreement for rental subsidy or supplement, OR (a)(2)(iv)(2) enters into an agreement with the governing body of the county or municipal corporation 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 (5) years; and

WHEREAS, the Owner hereby represents that, as of the date hereof, pursuant to the Owner’s borrowing of the PRHP Loan and execution and delivery of the subject Regulatory Agreements, the Project qualifies under the provisions of said Section 7-506.1, supra, for an agreement for negotiated payments in lieu of the payment of Prince George’s County taxes for the Project; and

WHEREAS, pursuant to Resolution No. CR-_____, adopted on _____, the County Council of Prince George’s County, Maryland, approved the PILOT for the Property and authorized the County to enter into this Agreement; and

WHEREAS, the County agrees to enter 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 7-506.1, supra, and as governed by all applicable local, State and federal laws; and

WHEREAS, pursuant to Section 7-506.1, supra, the Prince George’s County Department of Housing and Community Development (“DHCD”) analyzed and determined the amount payable by the Owner to the County in lieu of the payment of 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: hereinafter

1. This Agreement shall become effective on the date of the Execution of this Agreement (“**Effective Date**”) and the obligation to pay negotiated payments in lieu of taxes shall commence as of the established Substantial Completion of the Project (as defined in paragraph 4) 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 Prince George’s County taxes on real property under the Tax-Property Article of the Annotated Code of Maryland (2012 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 Service Facilities, including parking facilities, 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, which is defined as the sum of the current i) Prince George’s County portion; and ii) Prince George’s County Schools portions of the annual assessments for Prince George’s County real property taxes for tax accounts: _____ . The Owner and the County expressly agree and understand that any taxes, fees and or fines assessed by other agencies such as the State of Maryland, Park and Planning, Washington Suburban Sanitation Commission, and solid waste charges and applicable fees for Bay Restoration and Clean Water (collectively referred to herein as “**Other Real Estate Taxes and Fees**”) are not subject to provisions of this Agreement. The Owner shall, therefore, pay all Other Real Estate Taxes and Fees in accordance with the applicable assessment and payment requirements.

3. For the period commencing upon the Effective Date and ending on the first to occur of: 20 (twenty years) years from Substantial Completion, as hereinafter defined in paragraph (3), or the first date on which all of the Regulatory Agreements have been terminated, or upon an occurrence of any of the events set forth in paragraph (5)(e) below (the “**Termination Date**”), the Project shall be exempt from Prince George’s County real property taxes and special taxing district charges.

4. Beginning with the first full tax year from the date on which the Project has obtained its first Certificate of Occupancy as a result of a certification of substantial completion from the Project’s Architect (“**Substantial Completion**”), in lieu of all taxes normally assessed by Prince George’s County, the Owner shall pay Prince George’s County a minimum annual payment based on the fraction of market rate units as a proportion of all units within the Project (the “**Minimum Annual Payment**”) for the Market Rate Project Portion. The Minimum Annual Payment will be determined by multiplying the current year’s annual assessment for Prince

George's County real property taxes, as described in paragraph (2), by the fraction 27/114. The Owner shall forward a copy of the Certificate of Occupancy to the County's Director of Finance and the Director of the County's Department of Housing and Community Development, at the addresses provided herein, within five (5) business days after issuance.

(b) For each year after the first full year from the Substantial Completion Date and continuing until the Termination Date, in addition to the annual payment of Other Real Estate Taxes and Fees as set forth in paragraph (2) and the Minimum Annual Payment as set forth in the preceding clause (a) of paragraph (4), the Owner shall make annual payments to the County for each tax year in an amount equal to 25% of the Project's prior year remaining Surplus Cash (as such term is defined in the State Regulatory Agreement), if any remains, after i) 21% of Surplus Cash has been paid or deposited into reserves as required by the PRHP Loan and its covenants; and after ii) the balance of deferred development fee has been repaid in full (the "**25% Cash Flow Amount**"). This amount will be determined from the audited annual property income statement for such prior year.

5. (a) The Minimum Annual Payment and the 25% Cash Flow Amount shall be paid by September 30 of each year.

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

(c) The difference between the Project amounts paid under paragraph (4) above and the amounts which would otherwise have been due prior to the Termination Date based on the annual assessment for Prince George's County real property 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 if the Project ceases to be used in whole or part for the purpose set forth in this Agreement prior to the Termination Date, 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, the Project shall no longer be exempt from the County real property taxes and as applicable, all real property taxes shall be due and immediately payable to the County; provided however, and so long as one or more of the Regulatory Agreements and affordability restrictions that form the basis of this Agreement survive foreclosure or conveyance by deed in lieu of foreclosure, the County hereby consents to the assignment of this Agreement to Capital One, National Association, Capital One Multifamily Finance, LLC and/or Federal Home Loan Mortgage Corporation (each, or their successor, assign and/or designee, a "Lender"), as may be applicable, in the event that any Lender acquires title to the Property in a foreclosure or by deed in lieu of foreclosure.

(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.

(i) Subject to Paragraph 5(d), the Property shall cease to be owned by the Owner or any successor to Owner or an event of default, as defined within the Regulatory Agreements, has been declared by the benefactor of the Regulatory Agreements and remains uncured by the Owner or its successor within sixty (60) days;

(ii) The Owner, the Property or the Project shall cease to comply with the conditions of Section 7-506.1;

(iii) 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; or

(iv) The Owner shall elect to terminate this Agreement by providing written notice to the County.

(f) The Limited Liability Company Operating Agreement of the Owner and the Regulatory Agreements shall be submitted by the Owner to the County's Director of Finance and the County's Director of the Department of Housing and Community Development, at the addresses shown below, within five (5) business days after execution.

(g) By March 31 of each tax year, the Owner shall submit to the County's Director of Finance and the County's Director of the Department of Housing and Community Development audited financial statements, in such detail as may be required by the Director of Finance to administer this Agreement. Said financial statements 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.

(h) Documents submitted to the County and notices provided hereunder should be addressed as follows:

Director
Office of Finance
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, MD 20772

Director
Department of Housing and Community Development
9200 Basil Court, Suite 500
Largo, MD. 20774

(i) 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.

(j) If the Owner has not paid the amount due under this Agreement within one hundred 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, which shall include the Deferred Amount, due as follows: the amount 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 Loans. The County's delay and or failure to provide notice within the time and manner stated herein shall not limit or otherwise be deemed a waiver of its rights and remedies in law and equity.

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

7. 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.

8. The recitals set forth above are herein incorporated as operative provisions.

[Signature Pages Follow]

IN WITNESS WHEREOF, GLENARDEN PHASE I, LLC, a Maryland 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.

GLENARDEN PHASE I, LLC

A Maryland limited liability company

By: Glenarden Phase I Managing Member
A Maryland limited liability company

By: Pennrose GP, LLC, its
managing member

By: _____
Mark H. Dambly, President

WITNESS

PRINCE GEORGE'S COUNTY, MARYLAND

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

WITNESS

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 Mark H. Dambly, the President of Pennrose GP,LLC, the managing member of Glenarden Phase I Managing Member, LLC, the managing member of Glenarden Phase I, LLC, and stated that as an officer being authorized to do so, has executed the foregoing instrument for the purposes herein contained.

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, Economic Development 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, Economic Development 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 the Glenarden Phase I was prepared by or under the supervision of the undersigned _____, an attorney admitted to practice before the Court of Appeals of Maryland.

By: _____