

ATTACHMENT B

**PAYMENTS IN LIEU OF TAXES
AGREEMENT
(Md. Code Ann., Tax-Prop. § 7-506.1)
(Subsidized Housing)**

CAPITALIZED TERMS USED IN THIS AGREEMENT SHALL HAVE THE MEANING GIVEN TO THEM IN THIS AGREEMENT UNLESS THE CONTEXT SAYS OTHERWISE.

THIS PAYMENTS IN LIEU OF TAXES AGREEMENT (“**Agreement**”) is made as of the Effective Date by and between Owner and the County. Capitalized terms used herein shall have the meaning ascribed to them below.

Project Facts & Terms

Owner Name:	Glenarden Hills Phase 3 Four, LLC
Property Address:	Building N: 8401 Marvin Wilson Way, Lanham, MD 20706 Building O: 8421 Marvin Wilson Way, Lanham, MD 20706 Building P: 8431 Marvin Wilson Way, Lanham, MD 20706 Building Q: 3140 Roland Kenner Loop, Lanham, MD 20706 Building R: 3130 Roland Kenner Loop, Lanham, MD 20706 Building S: 3110 Roland Kenner Loop, Lanham, MD 20706 Building T: 3046 Roland Kenner Loop, Lanham, MD 20706 Building U: 3151 Roland Kenner Loop, Lanham, MD 20706
Project Name:	Glenarden Hills Phase 3 (4%)
Project:	Pennrose, LLC, in partnership with the Redevelopment Authority of Prince George's County, SHABACH! Ministries, Inc. and B&W Solutions Inc, will undertake the development of a 114-unit affordable multifamily housing development known as “Glenarden Hills Phase 3, 4%”, which will be developed in conjunction with Glenarden Hills Phase 3, 9%.
Eligible Households:	
Total Number of Units:	114
Number of Affordable Units:	94
Number of Market Rate Units:	20
Annual Payment:	<i>See Definition below.</i>
Affordable Unit Annual Payment (applies when there are Market Rate Units in the Project)	\$102 per Affordable Unit for a total of \$9,588 per year

Annual Rate (expressed as a percentage)	2% per year
County Resolution Authorizing PILOT (number and adoption date):	<i>TBD (Example: CR 20-2002 adopted June 15, 2004)</i>
Term (in years):	40 years
Cash Flow Payment (insert none, if none):	<i>TBD (Example: 10.44% of the Project's prior year Surplus Cash (as such term is defined in the County's HOME Deed of Trust Note date of even date herewith))</i>
Effective Date:	

County Financing		
Place X adjacent to applicable source	Source of County Funding	Amount (\$)
	HOME Investment Partnership Funds	NONE
X	Housing Investment Trust Funds	\$3,000,000
	Other: _____	NONE

Other Financing	
Name of Lender/Financier	Amount (\$)*
LIHTC Investor – Bank of America, NA	\$9,573,260
M&T Realty Capital Corporation (Permanent Debt – Freddie TEL)	\$13,460,748
Maryland CDA Soft Debt (Rental Housing Works)	\$2,080,000
Redevelopment Authority of Prince George's County	\$5,933,731
Seller Note (Redevelopment Authority of Prince George's County)	\$1,634,000
Construction Loan – Bank of America, NA	\$20,800,000
Good Faith Deposit Return	\$134,607
Deferred Developer Fee	\$2,440,708

* Amounts are approximate and are subject to change up to closing date of financing.

RECITALS

A. The Owner has or will acquire the Property located in Prince George's County, Maryland for the purpose of constructing or rehabilitating the Project to provide housing to Eligible Households.

B. The Owner has or will contract to construct or rehabilitate the Project to provide housing to Eligible Households as set forth in the Owner's Application for a PILOT.

C. The Owner will finance the Project with the Project Financing which consist of funds from a qualifying federal, State, or local government program.

D. The Owner submitted a request or application to the County to permit the Owner to make payments in lieu of County real property taxes pursuant to Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (the "Act"). The Act provides, among other things, that real property may be exempt from County property tax if:

(1) the real property is owned or leased by a person engaged in constructing or operating housing structures or projects;

(2) 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;

(3) 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 (2) 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

(4) the owner and the governing body of the county where the real property is located agree that the owner shall pay a negotiated amount in lieu of the applicable county property tax.

E. The Prince George's County Department of Housing and Community Development ("DHCD") analyzed the Project 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.

F. Pursuant to the County Resolution, the County Council of Prince George's County, Maryland, approved the County entering into an agreement PILOT for the Property and authorized the County to enter into this agreement for negotiated payments in lieu of the payment of Prince George's County taxes for the Project.

G. To ensure the provision of housing for the Eligible Households, the County agrees to accept payments in lieu of County real property taxes, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the County agree as follows:

1. Definitions. Capitalized Terms used in this Agreement shall have the meaning given to them as set forth in this Agreement, including the Recitals and the Project Facts & Terms (the "**Project Facts Section**") attached hereto and incorporated herein by reference, unless context clearly indicates otherwise.

"**Affordable Units**" mean those rental units in the Project that will be dedicated to the

Eligible Households. The number of Affordable Units for the Project is set forth in the Project Facts Section.

“**Affordable Unit Annual Payment**” means the amount set forth in the Project Facts Section that represents the amount the Owner shall pay in lieu of taxes in accordance with this Agreement for the Affordable Units.

“**Agreement**” means this Payments In Lieu Of Taxes Agreement.

“**Annual Payment**” means the amount or formula set forth in the Project Facts Section that represents the amount that the Owner shall pay in lieu of taxes in accordance with this Agreement for a tax year. For projects consisting entirely of Affordable Units, then the Annual Payment shall consist of the Affordable Unit Annual Payment. For projects with both Affordable Units and Market Rate Units, the Annual Payment shall consist of the Affordable Unit Annual Payment plus the Market Rate Unit Annual Payment.

“**Annual Rate**” means that rate set forth in the Project Facts Section.

“**Cash Flow Payment**” means that certain amount, if any, set forth in the Project Facts Section, which is to be paid by Owner to the County in addition to the Annual Payment and any other payments under this Agreement.

“**County**” means Prince George’s County, Maryland, a body corporate and politic.

“**County Financing**” means the financing in the form of grants, loans, some other funding, or financial incentive provided by the County or through the County to Owner as set forth in the Project Facts Section.

“**Council Resolution**” means the resolution identified in the Project Facts Section which authorizes the County entering into this Agreement.

“**Deferred Amount**” means the difference between 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 Project in the absence of this Agreement, plus all unpaid and accrued interest, if any, which shall have been charged pursuant to this Agreement, less all amounts actually paid under this Agreement.

“**DHCD**” has the meaning given to it in the Recitals.

“**Effective Date**” means that date set forth in the Project Facts Section.

“**Eligible Households**” mean the households as described in the Project Facts Section that are eligible to reside in the Project and whose initial annual income is sixty percent (60%) or less of the median income as set from time to time by the United States Department of Housing and Urban Development for Section 8 Programs in the Baltimore Metropolitan Statistical Area.

“**Low Income Covenants**” means the covenants executed and recorded on the Property, in a form acceptable to the County, that require the Owner and all subsequent owners of the Property to offer for rent at least the Affordable Units to Eligible Households.

“**Market Rate Unit Annual Payment**” means the amount of County real property taxes that would be due with respect to the Market Rate Units if this Agreement was not in effect.

“**Market Rate Units**” means those rental units in the Project that are anticipated to be unrestricted and leased at market rate. The number of Market Rate Units for the Project is set forth in the Project Facts Section.

“**Other Financing**” means the other financing for the Project referenced in the Project Facts Section other than the County Financing.

“**Other Real Estate Taxes and Fees**” means, collectively, any taxes, fees and or fines assessed by or on behalf of 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.

“**Owner**” means the Owner identified in the Project Facts Section who is also the signatory of and party to this Agreement.

“**Person**” means, an individual, a corporation, an association, a limited liability company, a partnership, an estate, a trust and any other entity or organization.

“**PILOT**” means the negotiated payments in lieu of taxes.

“**Project**” means the project as described in the Project Facts Section.

“**Project Financing**” means the County Financing and Other Financing to the extent either type of financing exists in the Project.

“**Property**” means that particular property located at the address set forth in the Project Facts Section in Prince George's County, Maryland, as more particularly described in **Exhibit A** attached hereto.

“**Service Facilities**” shall be defined as it is defined in the Act and shall include non-dwelling commercial and community facilities, community rooms, dining halls, infirmaries, child and adult day care facilities, and drug rehabilitation facilities

“**Substantial Completion Date**” means the date on which the Project has obtained a Certificate of Occupancy from the appropriate authority.

“**Term**” means that period of time equal to the number of full tax years set forth in the Project Facts Section which commences on the Substantial Completion Date and expiring on the last day of such period.

“**Termination Date**” means the earlier of the following to occur: (i) last day of the Term, or (ii) the date upon which there is an occurrence of any of the events set forth in Section 7 of this Agreement.

“**Total Units**” means the total number of rental units in the Project as set forth in the Project Facts Section.

2. Effective Date; Acceptance of Payments. This Agreement shall become effective on the

Effective Date and the obligation to pay negotiated payments in lieu of taxes for the Project shall commence as of the Substantial Completion Date and shall remain effective until the Termination Date. The payments to be made by the Owner to the County, provided for herein with respect to the Project, 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, as amended. Such payments shall be made by the Owner in accordance with Sections 4 and 6 of this Agreement and shall be accepted by the County only as long as: (i) the Project is owned and used for the provision of rental housing and related Service Facilities, including parking facilities, on a limited distribution basis, to Eligible Households and pursuant to the Low Income Covenants; (ii) the Owner complies in all other respects with the requirements of the Act, and (iii) the Owner complies with all of its obligations under this Agreement.

3. Maximum Payments; Other Taxes and Fees. The intention of this Agreement is that any payments made in lieu of taxes pursuant to this Agreement shall at no time exceed the amount of County real property taxes which would have been paid for the tax year to which the payment applies if the Project were not exempt from taxation. The Owner and the County expressly agree and understand that the Other Real Estate Taxes and Fees are not subject to provisions of this Agreement. The Owner shall, therefore, pay all of the Other Real Estate Taxes and Fees in accordance with the applicable assessment and payment requirements; provided however, that this Agreement is not intended to limit the rights of the Owner to appeal or contest any real property assessment available under the State law.

4. Time and Place for Payments Due. All payments to be made pursuant to this Agreement shall be made by September 30th of each tax year. Payments shall be made to the Director of Finance, _____ . Payments of taxes based on the real property assessment shall be made at the time and in the manner provided by law.

5. Commencement of Exemption. During that period commencing with the Substantial Completion Date until the Termination Date, the Project shall be exempt from paying full Prince George's County real property taxes. The intent of this Agreement being that the Owner shall receive the benefit of the making payments in lieu of taxes commencing on the Substantial Completion Date and ending on the Termination Date.

6. Payments.

(a) Annual Payments. For the period from the Substantial Completion Date and until the Termination Date, the Owner shall make Annual Payments to the County for each tax year, subject to increase at the Annual Rate per year after the first full calendar year following Substantial Completion. If the Project consist entirely of Affordable Units, then the Annual Payment shall consist of the Affordable Unit Annual Payment. If the Project consist of both Affordable Units and Market Rate Units, the Annual Payment shall consist of the Affordable Unit Annual Payment plus the Market Rate Unit Annual Payment.

(b) Cash Flow Payments. If applicable, for each year after the first full year after the Substantial Completion Date and continuing until the Termination Date, the Owner shall make a Cash Flow Payment for each tax year. The Cash Flow Payment shall be (i) calculated by the Owner based on the audited annual property income statement from the prior year; and (ii) subject to the County's review and approval. The Cash Flow Payment shall be deemed sufficient if the County does not object within 60 days after receipt of the payment. If the Cash Flow Payment is not applicable to the Project then there shall be no PILOT Cash Flow Payment made under this Agreement. If the Cash Flow Payment applies to the Project, for the purposes of clarity, the Cash Flow Payments shall be made in addition to the payment of Other Real Estate Taxes and Fees and the Annual Payment.

(c) Recommencement of Tax Payments. Beginning on the Termination Date, the Project shall no longer be exempt from paying full County real property taxes and the Owner shall commence paying the regular County real property tax for the Project based on the County real property assessment.

(d) 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.

(e) Effect of Foreclosure or Deed in Lieu. 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. Notwithstanding the foregoing, this Agreement will continue to be in effect if a subsequent purchaser obtains ownership of the Project through a foreclosure, deed in lieu of foreclosure, or similar proceeding and if the subsequent owner is (a) in compliance with the requirements of (i) the Act, (ii) the Low Income Covenants, and (iii) this Agreement and (b) executes its own Agreement with the County containing the same terms and conditions as set forth in this Agreement, for a term equal to the term remaining in the Agreement. However, if the Low Income Covenants is terminated, this PILOT will also terminate.

7. Termination of Agreement. This Agreement shall terminate upon the occurrence of any of the following events, and upon termination all payments then due under this Agreement, shall be paid to the County within sixty (60) calendar days thereof.

(a) The Property shall cease to be owned by the Owner;

(b) An event of default, as defined within the Low Income Covenants, has been declared by the beneficiary of the Low Income Covenants and remains uncured by the Owner or its successor within sixty (60) days;

(c) The Owner, the Property or the Project shall cease to comply with the conditions of the Act;

(d) [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;]

(e) The Owner shall fail to deliver the annual financial statement required hereunder, which failure continues for ten (10) business days following Owner's receipt from the County of notice of such payment failure or

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

8. Payments Due; Treatment. 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.

9. Default for Failure to Pay; Remedies. If the Owner has not paid the amount due under this Agreement before March 30th following the due date, the County may, at its option, declare a default by providing notice of such default to the Owner and to the Persons listed on Exhibit B attached hereto. If within ten (10) business days of such notice, any payments that are owed have not been brought current by the Owner or a Person listed on Exhibit B on the Owner's behalf, then the County may declare all taxes, which shall include the Deferred Amount, due. In order to enforce its rights under this paragraph after a failure to bring payments current, the County may, in its sole and absolute discretion, renegotiate this Agreement, foreclose or seek any other remedy available at law or in equity (including tax sale proceedings). Payments due under this paragraph shall be considered a lien against the Property just as any other delinquent real property taxes shall constitute a lien. 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 available in law and equity.

10. Representations and Warranties.

(a) The Owner represents and warrants to the County that it is eligible in all respects to enter in this Agreement to make payments in lieu of taxes under the Act.

(b) The Owner covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

11. Reporting and Submission Requirements. The Owner covenants to comply with the following:

(a) 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 which shall include any information 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.

(b) Owner shall submit to the County's Director of Finance and the County's Director of the Department of Housing and Community Development, within five (5) business days after execution by Owner, the following documents: entity agreements, including but not limited to, the Operating Agreement or Limited Partnership Agreement, the Low Income Covenants, and any other agreement or documents deemed necessary for submission to the County.

(c) The Owner shall provide a copy of the Certificate of Substantial Completion to the County's Director of Finance and the Director of the Department of Housing and Community Development within five (5) business days after issuance.

(d) The Owner shall provide the amendments to any of the above documents or reports within five (5) business days after execution or receipt of such amendments. Any document or agreement recorded in Land Records shall include the appropriate recording reference.

12. Agreement to Maintain Housing for Lower Income Persons. Owner agrees to maintain the Property as rental housing for lower income persons under the requirements a federal, State, or local government program and the Owner agrees to renew any annual contributions contract or other agreement for rental subsidy or supplement.

13. Notices. Documents submitted to the owner or the County, as applicable and notices provided hereunder should be addressed as set forth in **Exhibit B** attached hereto and incorporated herein by reference, or such other address as directed by the listed recipient of such documents and notices.

14. Incorporation by Reference. The Project Facts Section and recitals, both set forth above, are herein incorporated as operative provisions. The Exhibits referenced in this Agreement and attached hereto are incorporated herein by reference.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

[Signature Pages Follow]

SIGNATURE PAGE TO PAYMENTS IN LIEU OF TAXES
AGREEMENT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the Effective Date.

OWNER:

GLENARDEN HILLS PHASE 3 FOUR, LLC, a Maryland limited liability company

By: Glenarden Hills Phase 3 Four Managing Member, LLC, its managing member

By: Pennrose Holdings, LLC, its managing member

By: _____
Mark H. Dambly, Chief Executive Officer

COUNTY:

PRINCE GEORGE'S COUNTY, MARYLAND

By: _____
Name: _____
Title: _____

EXHIBIT A

PROPERTY DESCRIPTION

(attach)

EXHIBIT B:

Addresses for Notices:

To the County:	To the Owner:
Director Office of Finance Wayne K. Curry County Administration Building 1301 McCormick Drive, Suite 1100 Largo, MD 20774	Glenarden Hills Phase 3 Four, LLC c/o Pennrose Holdings, LLC 230 Wyoming Avenue Kingston, PA 18704 Attn: Chief Executive Officer
With a Copy To:	With a Copy To:
Director Department of Housing and Community Development 9200 Basil Court, Suite 500 Largo, MD. 20774	Ballard Spahr LLP 300 E. Lombard Street, 18 th Floor Baltimore, Maryland 21202 Attn: Amy M. McClain
	***** Add additional rows for additional recipients: