

NEGOTIATED PAYMENTS IN LIEU OF TAXES AGREEMENT

BETWEEN

WOODYARD STATION 9 LLC

AND

PRINCE GEORGE'S COUNTY, MARYLAND

THIS NEGOTIATED PAYMENTS IN LIEU OF TAXES (“**PILOT**”) AGREEMENT (“**Agreement**”) is made this ____ day of _____, 20____, by and between **WOODYARD STATION 9 LLC**, a limited liability company organized under the laws of the State of Maryland (“**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 to be located on approximately 2.38 acres of land at 8999 Woodyard Road, on the north side of Woodyard Road, west of its intersection with Branch Avenue, and east of its intersection with Old Branch Avenue, located in Clinton, Maryland, and more particularly identified by parcel account number _____ by the Maryland 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 forty-six (46) multifamily residential apartment units (“**New Construction**”) and related facilities, which will be dedicated to providing housing for low to moderate income residents (the Property and the New Construction collectively referred to herein as the “**Project**”); and

WHEREAS, the acquisition and new construction of the Property will be financed in part from the proceeds of private loan (“**First Loan**”) and 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; and

WHEREAS, the Owner will operate the Project for rental housing in accordance with a LIHTC Covenant between the Owner and the CDA, as the same may be amended and/or restated from time to time (“**LIHTC Covenant**,”); and

WHEREAS, Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (2015 Replacement Volume, as amended) (“Section 7-506.1”), provides, among other things, except in Baltimore City, that real property may be exempt from county and municipal corporation property tax if the following apply: (a)(2)(i) the real property is owned by a person engaged in constructing or operating housing structures or projects; (which may include nondwelling commercial and community facilities, community rooms, dining halls, infirmaries, child and adult day care facilities, and drug rehabilitation facilities to serve its occupants and the surrounding neighborhood, each a “**Service Facility**”); (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 and the governing body of the county and, where applicable, the municipal corporation where the real property is located agree that the owner shall pay a negotiated amount in lieu of the applicable county or municipal corporation property 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 execution and delivery of the LIHTC Covenant, 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 real property taxes for the Project; and

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

(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

Completion of the Project and shall remain effective until the Termination Date (as defined below in paragraph 4). Completion of the Project is the date Prince George's County issues a Certificate of Occupancy (or Use and Occupancy Permit) for the Project. 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 payments 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 this Agreement 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 Facility, including parking facilities, on a limited distribution basis, pursuant to the Regulatory Agreements; and (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 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. The Owner expressly agrees and understands that any taxes, fees and or fines assessed by other agencies such as the State of Maryland, the Maryland-National Capital Park and Planning Commission, the Washington Suburban Sanitation Commission, the Washington Suburban Transit Commission, and solid waste charges and applicable fees for Bay Restoration and Clean Water (collectively, **"Other Real Estate Taxes and Fees"**) are not being deferred and are not covered under the scope of this Agreement. The Owner shall, therefore, pay all Other Real Estate Taxes and Fees and the County's real property taxes in accordance with the applicable assessment and payment requirements.

(3) Commencing from the Effective Date of this Agreement and continuing until the first full tax year from the date the Completion of the Project, all taxes based on the Prince George's County assessment are due to be paid in full on September 30th of each year. The Owner shall forward a copy of the Certificate of Use for the Project to the County's Director of Finance and the Director of the DHCD at the addresses provided herein, within five (5) business days after issuance.

(4) Beginning with the first full tax year from the Completion of the Project, the Project shall be exempt from paying full Prince George's County real property taxes for a period of forty (40) years, ending on the earlier of forty (40) years from the Completion of the Project, or upon an occurrence of any of the events set forth in paragraph (5)(e) below (**"Termination Date"**). The intent of this Agreement is that the Owner shall receive the benefit of the payments in lieu of taxes commencing for a full forty (40) tax years from the first full tax year from Completion of the Project.

(5) (a) For the period from the Completion of the Project and continuing until the Termination Date, in addition to the annual payment of Other Real Estate Taxes and Fees payable September 30th of each year, the Owner shall make annual payments to the County for each tax year of: no less than \$300.00 for each of the forty-six (46) completed units in the Project (at least \$13,800.00 annually). The payment amount described in this clause (5)(a) shall be increased by two percent (2%) per year after the first full

calendar year following Completion of the Project. Each annual payment shall be paid by September 30th of each tax 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 taxes.

(c) The difference between the Project amounts paid under (5)(a) above and the amounts which would otherwise have been due prior to the Termination Date, 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 (other than an interest rate adjustment refinancing, where there is no ownership change and there is no “cash out” to the Owner), or a 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. The provisions set forth in this paragraph shall survive termination or expiration of this Agreement.

(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, including the Deferred Amount, shall be due and immediately payable to the County. The provisions set forth in this paragraph shall survive termination or expiration of this Agreement.

(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) days thereof:

(i) The Property shall cease to be owned by the Owner or an event of default, as defined within the Regulatory Agreements, has been declared by the benefactor of the Regulatory Agreements and remained uncured by the Owner within sixty (60) days thereafter;

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

Prince George County Government
Office of Finance, Treasury Division
1301 McCormick Dr. Ste 1100
Largo, MD 20774

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

(6) (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.

(b) If the Owner has not paid the 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, including 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 Renovations 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 be a waiver of any of its rights and remedies in law and equity.

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

(10) This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, and any action for enforcement shall be brought in the Circuit Court for Prince George's County.

(11) If any clause, covenant, paragraph or provision herein shall be declared fully or partially invalid or unenforceable, the remaining clauses, covenants, paragraphs and provisions shall remain enforceable and valid to the fullest extent permitted by law.

(12) All understandings and agreements, oral or written, previously made between the parties are merged into this Agreement and this Agreement fully and completely expresses the agreement between the parties as to the PILOT. This Agreement cannot be amended, modified or terminated except by a written instrument executed by both parties hereto.

[Signature Pages Follow.]

IN WITNESS WHEREOF, WOODYARD STATION 9 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.

**Woodyard Station 9 LLC,
a Maryland limited liability company**

By: Woodyard Manager 9 LLC
A Maryland limited liability company
Its managing member
By: Pax Edwards, LLC
A Delaware limited liability company
Its managing member

WITNESS

By: _____
Name: Jeffrey D. Paxson
Title: President

PRINCE GEORGE'S COUNTY, MARYLAND

WITNESS

By: _____
Angie Rodgers
Deputy Chief Administrative Officer
for Economic Development

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 Woodyard Station 4 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 Angie Rodgers, Deputy Chief Administrative Officer for Economic Development 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: