

THE EFFECTIVE DATE OF THIS RESOLUTION IS DECEMBER 7, 2021

RESOLUTION NO. 21-40

Re: Overlook Manor Affordable Housing PILOT Agreement

A RESOLUTION to authorize Frederick County, Maryland (the "County") to enter into an agreement with New Overlook Owner, LP, a Maryland limited partnership, (the "Owner") whereby the Owner will be allowed to pay a stipulated amount of money in lieu of regularly assessed property taxes in order to facilitate the development of income restricted rental housing for residents of Frederick County, Maryland.

WHEREAS, it is in the best interests of the County to encourage and facilitate the development of affordable rental housing for low to moderate income residents of Frederick County, Maryland; and

WHEREAS, Owner proposes to develop certain property located at 101 Tillman Place, in the City of Frederick, Maryland, further identified as tax parcel identification number ____ - _____ (the "Property"), and to construct thereon an apartment development containing 63 apartment units to be rented as housing for low to moderate income residents of Frederick County (the "Project"); and

WHEREAS, in order to maintain affordable levels of rents and still be financially feasible, the Project, which will obtain partial financing from the Community Development Administration ("CDA") of Maryland's Department of Housing & Community Development (the "State Loan"), will require additional financial assistance in the form of relief from the full payment of otherwise due Frederick County real property taxes; and

WHEREAS, Section 7-506.1, Tax-Property Article, of the Annotated Code of Maryland allows the County and Owner to enter into an agreement for the payment of a negotiated amount in lieu of Frederick County real property taxes (a "PILOT Agreement"); and

WHEREAS, it has been Frederick County's practice to recognize by Resolution the County's willingness to accept a mutually agreeable sum of money in lieu of otherwise due Frederick County real property taxes pursuant to a PILOT Agreement for a specific property and project, in addition to the execution of the PILOT Agreement itself; and

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") and the CDA may require certain revisions to the PILOT Agreement as part of the loan approval process by these agencies.

NOW THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that pursuant to the authority granted the County by the Annotated Code of Maryland, Tax-Property Article, Section 7-506.1, the County Council has determined that the Property and Project to be developed thereon shall not be subject to the otherwise due full amount of Frederick County real property taxes if Owner enters into and thereafter complies

with all provisions of the PILOT Agreement, a copy of which is attached as Exhibit A, and incorporated herein by reference.

AND BE IT FURTHER RESOLVED, that the County Executive of Frederick County, Maryland is authorized and empowered to execute the PILOT Agreement attached as Exhibit A hereto (including any changes to the PILOT Agreement that may be required by HUD and CDA), and any and all documents required in connection therewith.

The undersigned certifies that this Resolution was approved and adopted on the 7th day of December, 2021.

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

By: 
M. C. Keegan-Ayer, President

PAYMENT IN LIEU OF TAX AGREEMENT

(OVERLOOK MANOR)

This Payment In Lieu Of Tax Agreement (the "PILOT Agreement"), made and entered into as of the ^{27th}~~18th~~ day of January, 2022 (the "Agreement Date"), is by and between New Overlook Owner, LP, a Maryland limited partnership (the "Owner"), Frederick County, Maryland, a body corporate and politic of the State of Maryland (the "County"), and The City of Frederick, a municipal corporation of the State of Maryland (the "City").

WITNESSETH

WHEREAS, Owner plans to rehabilitate 63 income-restricted rental housing units at a property located in the City of Frederick, Maryland at 101 Tillman Place (the "Property"); and

WHEREAS, Owner intends to use the Property to provide 51 rental housing units for individuals whose average income is at or below 60% of the Area Median Income ("AMI") as calculated and established each Fiscal Year by the Secretary of the U.S. Department of Housing and Urban Development (the "60% Units), and 12 rental housing units for individuals whose income is at or below 50% of the AMI (the 50% Units) (collectively, the 60% Units and the 50% Units comprise the "Project"); and

WHEREAS, Owner has requested that the County and the City agree to allow Owner to use income averaging as allowed under 26 U.S. Code §42(g)(1)(C) for the 60% Units rather than requiring that each individual or head of household's income not exceed 60 percent of the Frederick County AMI (Area Median Income); and

WHEREAS, the use of income averaging for the 60% Units will allow the Owner to qualify for low income housing tax credits so long as the incomes for the 60% Units at the Property average 60% or less of AMI; and

WHEREAS, Owner intends to thereafter preserve the Property and the Project as income-restricted rental housing, and to comply with the requirements of 26 U.S. Code Section 42(g)(1)(C); and

WHEREAS, Owner has received a bond inducement letter for financing from the Community Development Administration, a unit in the Division of Development Finance of the Department of Housing and Community Development, a principal department of the State of Maryland ("CDA") and is eligible under Section 42(m) of the Internal Revenue Code of 1986 for Low Income Housing Tax Credits, has applied to CDA for a Rental Housing Works loan (the "RHW Loan"), and has received a letter of intent for equity from the sale of Federal Low Income Housing Tax Credits (the "Tax Credits"), all of which Owner anticipates will be funded in the amounts requested but not all of which will necessarily be closed, completed, or funded by the Effective Date of this PILOT Agreement; and

WHEREAS, the Owner will continue to operate the Property as income restricted rental units for eligible persons pursuant to one or more regulatory agreements between the Owner and CDA (the "Regulatory Agreement"), executed in connection with the above described financing of the Project; and

WHEREAS, the County and the City each maintain their respective codes and other legislative documents regarding real property which apply to Owner's Property as described herein; and

WHEREAS, Owner represents that the Project will qualify in all respects with the requirements of Tax-Property Article, Section 7-506.1, and for an agreement for negotiated payments in lieu of the otherwise full amount of County and City real property taxes that would be imposed upon the Property and Project; and

WHEREAS, Owner seeks to enter into this PILOT Agreement in order to establish general stability and predictability for its real property tax exposure as Owner secures Tax Credit investors; and

WHEREAS, Owner, County, and City jointly agree to enter into a single, comprehensive PILOT Agreement; and

WHEREAS, County and City shall only enter into this PILOT Agreement and accept payment of a reduced sum of money in lieu of Frederick County and The City of Frederick real property taxes, if the Owner at all times conducts its operations in accordance with the requirements of this PILOT Agreement and the Tax-Property Article, Section 7-506.1.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants, terms and agreements hereof and pursuant to the authority granted by the Annotated Code of Maryland, Tax-Property Article, Section 7-506.1, the parties agree as follows:

1. Term.

(a) This PILOT Agreement shall become effective as of the date that Owner completes the Project and obtains a certificate of occupancy for the entire Project (the "Effective Date"), which, subject to the provisions of Section 7 hereof, must occur within two years after the Agreement Date as indicated above. This PILOT Agreement shall

remain effective, unless otherwise terminated pursuant to the terms herein, until the date on which the "Extended Use Period" expires under the "Low-Income Housing Tax Credit Covenant" to be recorded in the land records against the Property, as may be extended by subsequent covenants extending the period of income restrictions, or for 40 years from the Effective Date of this PILOT Agreement, as may be extended by mutual agreement of the parties, whichever occurs first (the "Term").

(b) Subject to Section 5 below, in no event shall the Term continue beyond such time that (i) unless otherwise excused herein, any of the housing units in the Project are not used for housing of income-restricted persons; (ii) the Property and Project cease to be owned and used for provision of rental housing and related service facilities (including parking facilities) pursuant to the Regulatory Agreement; (iii) the Property and Project fail to comply in all respects with Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland pursuant to which the County and the City are authorized to enter into an agreement for the payment of a negotiated sum in lieu of taxes; or (iv) the Property and Project fail to comply with the obligations under this PILOT Agreement.

(c) Additionally, the Term may not extend beyond the effective date of a repeal or amendment of the applicable enabling tax and PILOT provisions of the Annotated Code of Maryland unless such legislation provides a grandfathering provision for those PILOT Agreements already in existence prior to the effective date of the repeal or amendment.

2. Payment In Lieu of Taxes.

(a) Beginning with the County's first full fiscal year after the Effective Date of this PILOT Agreement and for each fiscal year thereafter during the Term of this

PILOT Agreement, the County shall credit Thirty-One Thousand, Two Hundred Dollars (\$31,200) (the "County PILOT Credit") to the real property taxes due for the Property. Prior to the first full fiscal year after this PILOT Agreement becomes effective the Owner shall pay the County the normal taxes that are imposed on the Property without any portion of the PILOT Credit. In no fiscal year shall the amount of the County PILOT Credit exceed the amount of County taxes due.

(b) Beginning with the City's first full fiscal year after the Effective Date of this PILOT Agreement and for each fiscal year thereafter during the Term of this PILOT Agreement, the City shall credit Twenty-Three Thousand, Nine Hundred Seventy-Nine Dollars (\$23,979) (the "City PILOT Credit") to the real property taxes due for the Property. Prior to the first full fiscal year after this PILOT Agreement becomes effective the Owner shall pay the City the normal taxes that are imposed on the Property without any portion of the PILOT Credit. In no fiscal year shall the amount of the City PILOT Credit exceed the amount of City taxes due.

(c) Nothing in this PILOT Agreement shall be construed to apply to any other City or County taxes and charges, including but not limited to applicable fire and rescue tax, sewer and water charges, system benefit charges, and building excise tax that Owner is or may in the future be required to pay to the City or the County. The PILOT Credit provided for herein shall not apply to any non-residential portion of the Project, and shall not affect any other applicable municipal or state tax or charge of any kind unrelated to real property taxes, for which the Owner shall continue to be responsible.

3. Taxes Upon Expiration or Termination. Upon expiration or termination of this PILOT Agreement for any reason, full County and City real property taxes shall be

paid from the point of expiration or termination forward, based on the assessed value of the Property and the applicable real property tax rates in effect at such time.

4. Requirements For Continued PILOT. The continued right of the Owner to enjoy the benefits of this PILOT Agreement and to make property tax payments in accordance with Paragraph 2 above is conditioned upon compliance at all times during the Term of this PILOT Agreement with the following conditions. The failure to comply with any of these conditions shall cause an immediate termination of this PILOT Agreement without further notice being required to be given to Owner:

(a) The Owner must comply in all respects with the applicable provisions of the Tax-Property Article and other provisions of the Annotated Code of Maryland, with the Frederick County Code, with The City of Frederick Code, and with their respective rules and regulations, as they relate to the Property;

(b) The Owner shall not transfer, sell, or exchange the Property if that transfer, sale, or exchange would change the Property's use as income-restricted rental housing as permitted by the Regulatory Agreement;

(c) In the event of an anticipated refinancing, transfer, sale, or exchange of the Property that will not change the Property's use as income restricted rental housing, the Owner shall provide at least ninety (90) days' prior written notice to the City and the County. The Owner's notice of refinancing, transfer, sale, or exchange of the Property must include documentation that proves, to the County and the City's satisfaction, the need for the Project to continue to receive the annual PILOT Credit.

(i) If the County or the City determines that the Project does not have a continuing need for the annual PILOT Credit, then the County or the City shall

notify the Owner in writing of this determination and this PILOT Agreement shall be terminated as of the date of the written notice.

(ii) If the County and the City determine that the Project has a continuing need for the annual PILOT Credit, then the County and the City will provide written notice of their consent to or disapproval of the refinancing, transfer, sale, or exchange of the Property. The County's and City's consent may be withheld in their sole discretion in the event the refinancing, transfer, sale or exchange is to an unaffiliated third-party. If the refinancing, transfer, sale, or exchange of the Property is to a party affiliated with the Owner, the County and City's consent shall not be unreasonably withheld, conditioned or delayed.

(d) The Owner shall provide, on an annual basis, and otherwise upon request, to the County's and the City's chief financial officers (each a "Finance Director") an annual financial report audited by an independent Certified Public Accountant in accordance with Generally Accepted Accounting Principles. Furthermore, a Finance Director shall have the ability upon reasonable notice to the Owner, to examine the Owner's and Project's books and records. Such books and records must be sufficient to verify that the units have been rented exclusively to income-qualified persons. The Owner shall submit the audit to the County and the City within ninety (90) days after December 31 of the year in which the Owner receives a certificate of occupancy for the entire Project, and within 90 days of each subsequent December 31 thereafter;

(e) The Owner shall certify in writing to the respective Finance Directors, on an annual basis or otherwise upon request of a Finance Director, the continued compliance with the terms and conditions of this PILOT Agreement, with the

applicable provisions of the Tax-Property Article and other sections of the Annotated Code of Maryland, with the Frederick County Code, with The City of Frederick Code, and with their respective rules and regulations;

(f) The Owner shall provide written certification of the continuing need for the Project to receive the annual PILOT Credit to the Finance Director, within 30 days after the 15th anniversary of the Effective Date of this PILOT Agreement, and on an annual basis thereafter.

(g) PILOT payments as required hereunder and payment of all other taxes and charges (including interest) applicable to the Property must be timely paid. Interest on overdue payments, in the same amount as charged to other delinquent County and City taxpayers, shall be added to the amount due and collected by the County and the City in the same manner that real property taxes are collected.

5. Tax Implications for Noncompliance.

(a) If any portion of the Property or Project is determined to have been taken out of service and is not available for income-qualified persons during the Term of this PILOT Agreement, by virtue of sale, refinancing, or other action of the Owner including, but not limited to, renting a unit to someone who at the start of that resident's occupancy is not a qualified person, then it shall be as though there had never been a PILOT Agreement on the unit(s) removed from the income-restricted rental housing. At such time as Owner becomes aware that a unit is taken out of service as described above, the Owner shall have 180 days from that date to remedy the noncompliance. If the Owner fails to return the unit to compliance within the period of time required hereunder, then all County and City real property taxes that would have been imposed from the initial Effective Date

of the PILOT Agreement for the unit, less any already paid PILOT for the out of service unit, will be immediately due and payable to the County and the City.

(b) If, at any time an otherwise qualified occupant's income increases above the limits established to qualify for the income-restricted housing, the PILOT Agreement terms shall remain in effect unless the Owner fails to comply with applicable laws, rules or regulations including but not limited to Internal Revenue Code Section 42(g)(2)(D).

(c) An unoccupied or empty unit is deemed a unit that is in compliance, and is therefore not subject to the tax implications of this section, which apply only to those units which are taken out of service as housing available for income-restricted housing.

6. Residential Use. The Owner shall not in any manner or to any extent transfer or exchange the Property in a way that would change its use as a residential rental project for income-qualified persons without risking immediate termination of this PILOT Agreement. In the event, however, the Owner wishes to transfer or exchange the Property at any time during the Term of this PILOT Agreement, and the transferee expresses the desire to maintain the Property as a residential rental project for income-qualified persons and in the PILOT Program, the Owner must notify the County and the City as described in Paragraph 4(c) herein.

7. Completion of Project. The Owner anticipates that the Project will be complete, as evidenced by the issuance of certificates of occupancy for the entire Project, no later than twenty-four (24) months from the Agreement Date. If the Project is not complete within this time period, the Owner will have ninety (90) days to complete the Project or to commence and diligently pursue completion of the Project if the Project cannot reasonably be completed within the ninety (90) day period. If the Owner will fail

to complete the Project as required under this Section, then the Owner must notify the County/City as soon as possible with the reasons for the delay and an estimated time for completion. Upon review of the notice, the County/City may extend the time for completion in a written amendment to this Agreement. If the Project completion continues to be delayed beyond the time period in any amendment, the County/City shall have the right to declare this PILOT Agreement null and void by providing written notice to the Owner.

8. Referenced Documents. Any document, or amendments thereto, referenced in this PILOT Agreement shall be provided, with appropriate recording references, by the Owner when executed and shall be attached to this PILOT Agreement by an addendum identifying such documents for the purpose of this PILOT Agreement.

9. Amendment. This PILOT Agreement may not be amended, altered or modified except by a written amendment executed by all parties.

10. Governing Law and Dispute Resolution. This PILOT Agreement and the rights and obligations of the parties hereto and any claims or disputes thereto shall be governed by and construed in accordance with the laws of the State of Maryland. The exclusive venue for litigation shall be Frederick County, Maryland. If parties are not able to resolve disputes directly with each other, the parties may, prior to litigation, attempt to resolve any disputes that arise out of this PILOT Agreement through mediation before a mutually acceptable mediator.

11. Right of First Refusal

(a) The Owner hereby grants to the County and the City a Right of First Refusal to purchase the Property during the Term and any extensions of this PILOT Agreement. If

the Owner desires to sell the Property (subject to the terms of this PILOT Agreement), and receives a bona fide offer to purchase, the Owner shall give the County and the City at least ninety (90) days' prior written notice of its intention to sell the Property. The Owner's notice shall state the terms and conditions proposed to, and accepted by, an interested third party.

(b) The County and the City will have fifteen (15) business days after receipt of Owner's written notice in which to exercise or not exercise the Right of First Refusal. If the County and the City fails to provide written notice of its intent to exercise this Right of First Refusal within the fifteen (15) business day period, then the County and the City will be deemed to have refused the Right of First Refusal. If the County or the City elects to exercise the option, it shall do so in writing during the fifteen (15) business day period, and the Owner and County and City shall enter into an agreement of sale for the Property on the same terms and conditions as included in the Owner's notice. Any such sale shall be subject to approval of any mortgagees if applicable, including HUD under their Transfer of Physical Assets (TPA) procedures and in any event will not apply to any sale or deed in lieu of foreclosure under the HUD-insured loan.

12. Agreement to Run With Land. The parties acknowledge and agree that this PILOT Agreement shall be recorded in the land records of Frederick County, Maryland and shall be appurtenant to and run with the Property.

13. Other Taxes and Fees. Nothing herein shall be deemed or construed to be a reduction or waiver by the County or the City of any tax or fee of any kind whatsoever, including but not limited to any development impact fee, building excise tax, recordation tax, fire or rescue tax, or income tax except as provided for above in Paragraph 2.

14. Assignment of PILOT Agreement. This PILOT Agreement may not be assigned or transferred, in whole or in part, in any manner without the prior written consent of the County and the City, which consent may be withheld in the sole discretion of the City and the County in the event the assignment or transfer is to an unaffiliated third-party. If this PILOT Agreement is assigned or transferred, in whole or part, to an entity that is affiliated with the Owner, then consent shall not be unreasonably withheld, conditioned or delayed.

15. Counterparts. This PILOT Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

16. County and City PILOT Policies. The County's PILOT Policy in effect as of the date of this PILOT Agreement and attached hereto as Exhibit A, is incorporated by reference and made a part of this PILOT Agreement with Owner responsible for all obligations thereunder. Further, the City's PILOT Policy in effect as of the date of this PILOT Agreement and attached hereto as Exhibit B, is incorporated by reference and made a part of this PILOT Agreement with Owner responsible for all obligations thereunder.

17. Notices. All notices shall be in writing and either hand delivered or sent by United States certified or registered mail, postage prepaid, return receipt requested. Notices shall be given to the parties as follows:

If to the County, then to: Frederick County, Maryland
ATTN: Director – Dept. of Housing & Community
Development
401 Sagner Avenue
Frederick, Maryland 21701

Copy to:	Frederick County Attorney Winchester Hall 12 East Church Street Frederick, Maryland 21701
If to the City, then to:	Frederick City Hall ATTN: City Attorney 101 North Court Street Frederick, Maryland 21701
Copy to:	ATTN: Director of Housing and Human Services The Department of Housing and Human Services 100 South Market Street Frederick, Maryland 21701
If to the Owner, then to:	New Overlook Owner, LP c/o Overlook GP, LLC 122 East 42 nd Street, Suite 4900 New York, NY 10168 Attention: Asset Manager
Copy to:	Bocarsly Emden Cowan Esmail & Arndt LLP 7700 Old Georgetown Road, Suite 600 Bethesda, MD 20814 Attention: Craig Emden, Esq.
Copy to:	PNC Bank, N.A. 101 South Fifth Street 7th Floor Louisville, KY 40202 Attention: Kevin Clark

Any party may modify the address to which notice to it shall be sent, by delivery of notice to the other parties in accordance with the foregoing. Each notice that is sent in accordance with the foregoing shall be presumed to have been received on the business day it is personally delivered or three (3) business days after the date of mailing, as applicable.

18. Entire Agreement; Recitals; Headings. This PILOT Agreement contains the entire agreement of the parties with respect to the matters herein set forth. All other


agreements and understandings of the parties relating to the subject matter of this PILOT Agreement, written or oral, if any, are merged into this PILOT Agreement. The recitals set forth at the beginning of this PILOT Agreement shall be deemed to be a part of this PILOT Agreement. The headings set forth at the beginning of each section or subsection of this PILOT Agreement are for convenience of reference only and do not have any independent legal significance.

IN WITNESS WHEREOF, New Overlook Owner, LP, a Maryland limited partnership, Frederick County, Maryland, a body corporate and politic of the State of Maryland, and The City of Frederick, a municipal corporation of the State of Maryland have caused this PILOT Agreement to be signed by duly authorized individuals, as duly attested, as of the day and year first hereinabove written.

NEW OVERLOOK OWNER, LP,
a Maryland Limited Partnership

By: OVERLOOK GP, LLC,
A Maryland limited liability company,
Its General Partner

By: THE NHP FOUNDATION,
A District of Columbia non-
profit corporation,
Its Managing Member



Joseph P. Wiedorfer
Senior Vice President

WITNESS:

FREDERICK COUNTY, MARYLAND

By: Joseph M. Grossnickle

By: Jan H. Gardner
Jan H. Gardner, County Executive
KLM by jmg

WITNESS:

THE CITY OF FREDERICK

By: Kurt Hupel

By: Michael O'Connor
Michael O'Connor, Mayor

STATE OF Washington, COUNTY OF DC, TO WIT:

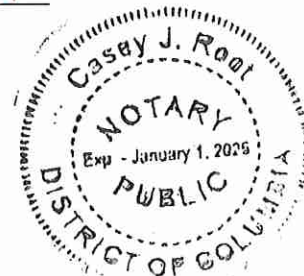
I HEREBY CERTIFY, that on this 10 day of November, 2021, before me, the subscriber, a Notary Public in and for the District of Columbia, personally appeared Joseph P. Wiedorfer, Senior Vice President of The NHP Foundation, a District of Columbia non-profit corporation, which is the Managing Member of Overlook GP, LLC, a Maryland limited liability company, which is the General Partner of New Overlook Owner, LP, a Maryland limited partnership, and acknowledged the foregoing PILOT Agreement to be the act of said limited partnership, and at the same time, he made oath in due form of law that he is the Senior Vice President of the General Partner of New Overlook Owner, LP, a Maryland limited partnership, and is duly authorized to make this acknowledgement on its behalf.

WITNESS my hand and Notarial Seal.

Casby J. Root

Notary Public

My Commission expires: 1/1/25



STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 27th day of January, 2021, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Jan H. Gardner, who acknowledged herself to be the County Executive of Frederick County, Maryland a body corporate and politic, and that she, as County Executive, being authorized so to do, executed the foregoing PILOT Agreement for the purposes therein contained, by signing the name of the body corporate and politic by herself as County Executive.

WITNESS my hand and Notarial Seal.



Joyce M. Grossnickle
Notary Public

My Commission Expires: 12/17/2024

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 18th day of January, 2022, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Michael O'Connor, who acknowledged himself to be the Mayor of The City of Frederick, a body corporate and politic, and that he, as Mayor, being authorized so to do, executed the foregoing PILOT Agreement for the purposes therein contained, by signing the name of the body corporate and politic by himself as Mayor.

WITNESS my hand and Notarial Seal.

Phyllis M. Hane
Notary Public



My Commission Expires: 11/2/24