

THE EFFECTIVE DATE OF THIS RESOLUTION IS March 7th, 2023

RESOLUTION NO. 23- 02

Re: The Residences at Railroad Square, LLC

A RESOLUTION to authorize Frederick County, Maryland (the "County") to enter into an agreement with The Residences at Railroad Square, LLC, a North Carolina limited liability company (the "Owner") whereby the Owner will pay a stipulated amount of money in lieu of regularly assessed property taxes in order to facilitate the development of income and age 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 age restricted and low to moderate income residents of Frederick County, Maryland; and

WHEREAS, Owner proposes to develop certain property located at 9 S. Maple Avenue in the City of Brunswick in Frederick County, Maryland (the "Property"), and to construct thereon an apartment development consisting of 45 rental housing units to provide income-restricted rental housing units to individuals or families: nine (9) units will be available for persons whose income is at or below 30% of the Area Median Income as calculated and established each Fiscal Year by the Secretary of the U.S. Department of Housing and Urban Development ("AMI"); eighteen (18) units will be available for persons whose income is at or below 40% of the AMI; and eighteen (18) units will be available for persons whose income is at or below 50% of the AMI (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, 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 to the County by the Annotated Code of Maryland, Tax-Property Article, Section 7-506.1, the County Council has determined

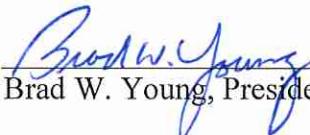
that the Property and Project to be developed thereon shall not be subject to the otherwise due full amount of Frederick County real property taxes if Owner enters into and thereafter complies with all provisions of the PILOT Agreement, a copy of which is attached as Exhibit A, and incorporated herein 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 March, 2023.

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

By:


Brad W. Young, President

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PAYMENT IN LIEU OF TAX AGREEMENT
(THE RESIDENCES AT RAILROAD SQUARE, LLC)

This Payment In Lieu Of Tax Agreement (the “PILOT Agreement”), made and entered into as of the 28th day of March, 2023 (the “Agreement Date”), is by and between The Residences at Railroad Square, LLC, a North Carolina limited liability company, and Frederick County, Maryland, a body corporate and politic of the State of Maryland (the “County”).

WITNESSETH

WHEREAS, Owner plans to construct 45 rental housing units at a property located at 9 S. Maple Avenue in the City of Brunswick, Frederick County, Maryland (the “Property”), all of which will be income-restricted rental housing units to individuals or families whose 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; and

WHEREAS, nine (9) units will be available for persons whose income is at or below 30% of the AMI; eighteen (18) units will be available for persons whose income is at or below 40% of the AMI, and eighteen (18) units will be available for persons whose income is at or below 50% of the AMI; and

WHEREAS, Owner intends to thereafter preserve the Property and Project as income-restricted rental housing; and

WHEREAS, Owner has received a reservation 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 of the Internal Revenue Code of 1986 for Low Income Housing Tax Credits, has applied to CDA for a Rental Housing Program loan, and other subordinate loans,

and has received a letter of intent for tax credit investor equity from the allocation 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, 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 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, County shall only enter into this PILOT Agreement and accept payment of a reduced sum of money in lieu of Frederick County 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 Owner and County hereby 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 restriction, or for 40 years from the Effective Date of this PILOT Agreement, and 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 pursuant to the Regulatory Agreement; (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 material respects with Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland pursuant to which the County is 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 Twenty-Three Thousand, Four Hundred Dollars (\$23,400) (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 County PILOT Credit. In no fiscal year shall the amount of the County PILOT Credit exceed the amount of County taxes due.

(b) Nothing in this PILOT Agreement shall be construed to apply to any other 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 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 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 material respects with the applicable provisions of the Tax-Property Article and other provisions of the Annotated Code of Maryland, with the Frederick County Code and with the County's 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 County. The Owner's notice of refinancing, transfer, sale, or exchange of the Property must include documentation that proves, to the County's satisfaction, the need for the Project to continue to receive the annual PILOT Credit.

(i) If the County determines that the Project does not have a continuing need for the annual PILOT Credit, then the County 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 determines that the Project has a continuing need for the annual PILOT Credit, then the County will provide written notice of its consent to or disapproval of the refinancing, transfer, sale, or exchange of the Property. The County's consent

may be withheld in its sole discretion in the event that 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'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 chief financial officer ("Finance Director") an annual financial report audited by an independent Certified Public Accountant in accordance with Generally Accepted Accounting Principles. Furthermore, the Finance Director shall have the ability upon reasonable advance written notice to the Owner, to examine the Owner's and Project's books and records during normal business hours. 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 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 Finance Director, on an annual basis or otherwise upon request of the 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, and with the applicable 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 taxpayers, shall be added to the amount due and collected by the County 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 real property taxes for the out of service unit going forward will become due and payable to the County.

(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 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 (subject to extension due to force majeure or as otherwise agreed to by parties). 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 as soon as possible with the reasons for the delay and an estimated time for completion. Upon review of the notice, the County 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 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 to the County, with appropriate recording references, by the Owner when executed.

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: provided, however, the venue may be the Maryland Federal District Court in the event HUD is a party to the litigation. 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 the Right of First Refusal to purchase the Property during the Term and any extensions of this PILOT Agreement as follows. If the Owner desires to sell the Property (subject to the terms of this PILOT Agreement), and receives a bona fide offer to purchase from an interested third party, the Owner shall give the County 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 by the interested third party. This Right of First Refusal shall not apply to a transfer of ownership due to a foreclosure or deed in lieu of foreclosure.

(b) The County will have thirty (30) days after receipt of Owner's written notice in which to exercise or not exercise the Right of First Refusal. If the County fails to provide written notice of its intent to exercise this Right of First Refusal within the thirty (30) day period, then the County will be deemed to have refused the Right of First Refusal. If the County elects

to exercise the Right of First Refusal, it shall do so in writing during the thirty (30) day period, and the Owner and County 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 approval under applicable Transfer of Physical Assets (TPA) procedures should the Project and Property remain subject to any HUD-insured loan upon the completion of such sale.

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 of any other 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 specifically 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, which consent may be withheld in the sole discretion of 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 PILOT Policy. 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.

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, 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 Owner, to: The Residences at Railroad Square, LLC
c/o Taft-Mills Group, LLC
631 Dickinson Avenue
Brunswick, Maryland 21716
Attn: C.J. Tyree

With a copy to:

Red Stone Equity Partners, LLC
110 Superior Avenue, Suite 1640
Cleveland, OH 44114
Attention: Managing Director & General Counsel

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, The Residences at Railroad Square, LLC, a North Carolina limited liability company, and Frederick County, Maryland, a body corporate and politic 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.

[Signatures start on the next page]

WITNESS:

THE RESIDENCES AT RAILROAD SQUARE,
LLC
A North Carolina limited liability company,

By: 

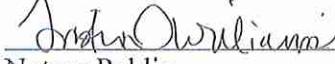
By: Taft-Mills Group, LLC
a North Carolina limited liability company
its Sole Member

By: 
Name: DUSTIN T. MILLS
Title: MANAGER

STATE OF NORTH CAROLINA, Martin County, TO WIT:

I HEREBY CERTIFY that on this 21st day of March, 2023, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Dustin T. Mills, who acknowledged himself to be the Manager of Taft-Mills Group, LLC, the Sole Member of The Residences at Railroad Square, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized so to do, executed the aforesaid PILOT Agreement for the purposes therein contained, by signing the name of the limited liability company by himself as Manager.

WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires: 01-09-2027



WITNESS:

FREDERICK COUNTY, MARYLAND

By: Joyce M. Grossnickle

By: Jessica Fitzwater
Jessica Fitzwater, County Executive

KLM by Jmg

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 28th day of March, 2023, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Jessica Fitzwater, 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

