

THE EFFECTIVE DATE OF THIS RESOLUTION IS AUGUST 15, 2016

RESOLUTION NO. 16-18

RE: 520 NORTH MARKET PILOT PROJECT

A RESOLUTION to authorize Frederick County, Maryland (the "County") to enter into an agreement with 520 North Market Apartments L.L.C., a Maryland limited liability company, (the "Owner") whereby the Owner might pay a stipulated amount of money in lieu of regularly assessed property taxes in order to facilitate the development of income restricted workforce 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 workforce rental housing for low to moderate income residents of Frederick County, Maryland; and

WHEREAS, Owner proposes to acquire certain property located at 520 North Market Street, Frederick, Maryland, further identified as tax parcel identification numbers 02-020637 and 02-020866 (the "Property"), and to construct thereon an apartment development containing at least fifty-three (53) apartment units to be rented as workforce 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 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

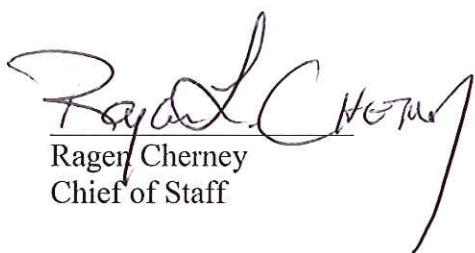
WHEREAS, it has been Frederick County's practice to recognize by Resolution the County's willingness to accept a mutually agreeable sum of money in lieu of otherwise due Frederick County real property taxes pursuant to a PILOT Agreement for a specific property and project, in addition to the execution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

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, it is 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, incorporated herein by reference.

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 and any and all documents required in connection therewith.

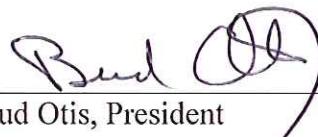
The undersigned certifies that this Resolution was approved and adopted on the 15th day of August 2016.

ATTEST:


Ragen Cherney
Chief of Staff

COUNTY COUNCIL
FREDERICK COUNTY, MARYLAND

By:


Bud Otis, President

R.J.M
8.16.14

GT 6.14.16

PAYMENT IN LIEU OF TAX AGREEMENT

This Payment In Lieu Of Tax Agreement (the "PILOT Agreement"), made and entered into as of the _____ day of _____, 2016, is by and between 520 North Market Apartments LLC, a Maryland limited liability company (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 has entered into a contract with the County to acquire land and a building located at 520 N. Market Street, The City of Frederick, Frederick County, Maryland, further identified as tax parcel identification numbers 02-020637 and 02-020866, formerly used for County offices (the "Property"); and

WHEREAS, Interfaith Housing Alliance, Inc. a Maryland non-profit corporation, is a non-profit organization based in Fredrick, Maryland whose mission is to develop, operate and maintain affordable housing projects and will be the sole owner of the managing member of Owner; and

WHEREAS, Owner intends to convert and expand the Property for use as a 59 unit housing project to primarily provide income restricted workforce housing for individuals with a minimum of 53 units reserved for households whose income is at or below 50% 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 (the “Project”); and

WHEREAS, Owner intends to thereafter preserve the Property and Project for workforce housing serving income restricted persons; and

WHEREAS, Owner has received a commitment from the Community Development Administration of the State of Maryland (“CDA”) for Low Income Housing Tax Credits, has applied for construction and permanent loans, has applied to Partnership Rental Housing for a loan, has applied to the Department of Housing and Community Development of the State of Maryland (“DHCD”) for a Rental Housing Works loan (the “RHW Loan”), has applied to the Frederick County Deferred Loan Program for a loan, and has applied 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 Agreement; and

WHEREAS, Owner will continue to operate applicable portions of the Property as rental units for income restricted workforce persons pursuant to a regulatory agreement between the Owner and DHCD (the “Regulatory Agreement”), executed in connection with the above described financing of the Project; and

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

WHEREAS, the Annotated Code of Maryland, Tax-Property Article, Section 7-506.1 provides that in certain circumstances real property may receive real property tax benefits if Owner, County, and City enter into a PILOT Agreement; 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, provided that 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. 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 must occur within two years of the date this PILOT Agreement was made as indicated above, and shall remain effective 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 20 years from the Effective date of this PILOT Agreement, as may be extended by mutual agreement of the parties, whichever occurs first (the “Term”).

(a) Subject to Section 5, in no event shall the Term continue beyond such time that (i) unless otherwise excused herein, at least 53 of the 59 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 all obligations under this PILOT Agreement. 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 grandfather provision for those PILOT Agreements already in existence prior to the effective date of the repeal or amendment.

(b) Owner anticipates that the Project will be complete, as evidenced by the issuance of an Architect's Certificate of Substantial Completion, no later than eighteen (18) months from the effective date of this Agreement. Owner will have ninety (90) days to cure any defaults or to commence and diligently pursue the curing of the default(s) in the event the default cannot be cured within the ninety (90) days.

2. Payment In Lieu of Taxes.

(a) Beginning with the 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 Owner shall pay to the County and the City a PILOT, as computed below, in lieu of the respective real property taxes due. Prior to the first full fiscal year after this PILOT Agreement becomes effective the Owner shall pay the County and City the normal taxes that are imposed on the Property.

(b) The amount of the PILOT obligation for the first full fiscal year after which this PILOT Agreement becomes effective shall be the total amount of (i) \$400 for each of the income restricted 53 housing units, and (ii) the real property tax the County and the City impose upon the Project's remaining 6 market rate housing units (to be determined as 6/59ths of the total amount of real estate taxes of the entire Property that would be otherwise due if not for this PILOT), which total amounts shall be prorated between the City and County in proportion of their respective real property tax rates.

(c) The PILOT payment for each following fiscal year during the term of this PILOT Agreement shall be similarly computed except that the tax obligation on 53 income restricted housing unit component of the PILOT will increase 2% in each

subsequent tax year; such increase to be divided between County and City in proportion to their respective tax rates.

(d) The PILOT payment to be made by the Owner to the County and to the City provided for herein with respect to the Property, shall be in lieu of the otherwise full amount of County and City real property taxes that would be due and is in addition to any other County and City 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 County or City that is not already included in the respective jurisdiction's real property tax and fees bill. The payment in lieu of real property taxes provided for herein is not in lieu of 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 otherwise of this PILOT Agreement, 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 the payments calculated 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 which shall effect an immediate termination of this PILOT Agreement without further notice being required to be given to Owner:

(a) The Owner complying in all respects with the 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 not transferring, selling, or exchanging the Property such 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 transfer, sale, or exchange of the Property as set forth in Section 4(b) above, the Owner providing written notice to the County and the City, at least ninety (90) days prior to undertaking such action and receiving written consent from the County and the City, which consent may be withheld in the sole discretion of City and County in the event the transfer, sale or exchange is to an unaffiliated third-party; otherwise such consent shall not be unreasonably withheld, conditioned or delayed in the event the transfer, sale or exchange is to Interfaith Housing Alliance, Inc. or any other member of Owner or in the event of a foreclosure by any lender to Owner.

(d) The Owner providing on an annual basis, and otherwise upon request, to the County's and the City's chief financial officers (each a "CFO") an annual financial report audited by an independent Certified Public Accountant in accordance with Generally Accepted Accounting Principles. Furthermore, a CFO shall have the ability upon reasonable notice to the Owner, to examine the Owner's and Project's books and records with respect to the income-restricted units. Such books and records shall be

sufficient to verify that at least the minimum 53 housing units have been rented to income qualified workforce persons. The Owner shall submit such 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 certifying in writing to the respective CFOs, on an annual basis or otherwise upon request of a CFO, 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) "Payment in lieu of tax" payments as required hereunder and payment of all other taxes and charges (including interest) applicable to the Property being 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 as real property taxes are collected.

5. Tax Implications for Noncompliance. If any portion of the Property or Project is determined to have been taken out of service so that less than 53 housing units are available for qualifying persons during the Term of this PILOT Agreement, by virtue sale, refinancing, or other action of the Owner such as, but not limited to, renting a unit to someone who at the start of that resident's occupancy is other than a qualified person, it shall be as though there had never been a PILOT Agreement on the unit(s) removed

the income restricted 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 the noncompliance or, in the event that Owner cannot cure within such 180-day period, then such period of time as is reasonably necessary to return the unit to housing available for income restricted workforce persons as permitted under all loan, equity and regulatory restrictions placed on Owner and/or the Property. If the Owner fails to return the unit to compliance within the period of time required hereunder, then all County and City real property tax 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. If, at any time an otherwise qualified occupant's income increases above the limits established to qualify for the income restricted workforce housing, the PILOT Agreement terms 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). An unoccupied or empty unit is deemed a unit that is in compliance, and is therefore not subject to the tax implications of this paragraph, which apply only to those units which are taken out of service as housing available for income restricted workforce 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 project for income restricted workforce housing 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 restricted qualifying persons and in the PILOT Program, the Owner must notify the and the City as described in Paragraph 4(c) herein.

7. **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.

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

9. **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. If parties are not able to resolve disputes directly with each other, the parties, prior to litigation, may first attempt to resolve any disputes that arise out of this Agreement through mediation before a mutually acceptable mediator.

10. **Agreement to Run With Land.** The parties acknowledge and agree that this PILOT Agreement shall be appurtenant to and shall run with the Property.

11. **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.

12. 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 City and County in the event the assignment or transfer is to an unaffiliated third-party; otherwise such consent shall not be unreasonably withheld, conditioned or delayed in the event the transfer or assignment is to Interfaith Housing Alliance, Inc. or any other member of Owner or in the event of a foreclosure by any lender to Owner.

13. 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.

14. 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. 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
5340 Spectrum Drive, Suite A
Frederick, Maryland 21703

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: Municipal Office Annex
ATTN: Deputy Director of Planning
140 West Patrick Street
Frederick, Maryland 21701

If to the Owner, then to: 520 North Market Apartments LLC
c/o Interfaith Housing Alliance, Inc.
5301 Buckeystown Pike,
Suite 320
Frederick, Maryland 21704
Attn: President

Copy to: c/o PIRHL Developers, LLC
800 West St. Clair Avenue, 4th Floor
Cleveland, OH 44113

Copy to: Bank of America, N.A.
NC1-007-11-25
100 N. Tryon Street
Charlotte, North Carolina 28255-0001
Attention: Nicole Baldon

With a copy to:

Bank of America, N.A.
Community Development Lending
Mail Code: DC1-701-03-14
730 15th Street, NW, 3rd Floor
Washington, DC 20005

Attention: Loan Administration Manager

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.

16. 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, 520 North Market Apartments LLC, a Maryland limited liability company, of which 520 N. Market Apartments GP Corp., a Maryland corporation, is the managing member, whose sole shareholder is Interfaith Housing Alliance, Inc., a Maryland non-profit corporation, 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.

WITNESS:

520 NORTH MARKET APARTMENTS
LLC, a Maryland limited liability company

By: Carol C. Riggs

By: Patricia A. Motter
520 North Market Apartments GP Corp.,
a Maryland corporation

By: Patricia A. Motter
Patricia A. Motter, President

WITNESS:

FREDERICK COUNTY, MARYLAND

By: _____

By: _____
Jan H. Gardner, County Executive

WITNESS:

THE CITY OF FREDERICK

By: _____

By: _____
Randy McClement, Mayor