



City of Annapolis
160 Duke of Gloucester Street
Annapolis, MD 21401

Chartered 1708

PAYMENTS IN LIEU OF TAXES AGREEMENT WITH FOREST DRIVE LIHTC, LLC

THIS PAYMENTS IN LIEU OF TAXES (PILOT) AGREEMENT is made this ____ day of _____ 2023 (the "Agreement"), by and between FOREST DRIVE LIHTC, LLC, a Maryland limited liability company (the "Owner"), and the CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland (the "City").

WHEREAS, the Owner is the contract purchaser of real property at 1701 Forest Drive, Annapolis, MD, known as the Willows at Forest Drive, and as more particularly described as Tax Account Numbers 6000-0631-6800, 6000-9010-2218, 6702-9009-9221, and 6702-9009-9222 (the "Property"); and

WHEREAS, the Owner intends to develop fifty eight (58) dwelling units at the Property, fifty eight (58) of which will operate as a qualified low-income housing units within the meaning of S 42(g)(1)(B) of the Internal Revenue Code of 1986 (26 U.S.C. §42), as may be amended (collectively, "26 U.S.C. §42") (the "Project"); and

WHEREAS, the City is seeking to assist the Owner in providing habitable and affordable housing at the Property; and

WHEREAS, under the Annotated Code of Maryland, subsidized housing for low- and moderate-income persons is exempted from real property taxes levied or imposed by a county or municipal corporation if Owner and City enter into a PILOT agreement and certain criteria are met and maintained; and

WHEREAS, the parties are entering into this Agreement to allow for such purposes, which is authorized pursuant to Resolution No. R-34-23 of the City Council of the City of Annapolis.

NOW THEREFORE, in consideration of these premises and the terms and conditions stated below, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereby agree as follows:

1. Operation of Property/Project. For the term of this Agreement, the Owner shall:
 - (a) Operate the Project as rental housing for low income households and shall limit rents pursuant to the Extended Low Income Housing Covenant for Low Income Housing Tax Credits between the Owner and the Maryland Department of Housing and Community Development (the "Extended Use Covenant"); and
 - (b) With Payments in Lieu of Taxes (PILOT), as defined below, make five (5) dwelling units available to households having incomes of no more than fifty (50) percent of the area median

income, fourteen (14) dwelling units available to households having income no more than forty (40) percent of the area median income, twenty seven (27) dwelling units to households having income of no more than thirty (30) percent of the area median income, and twelve (12) dwellings units to households having income of no more than twenty (20) percent of the area median income. The restrictions set forth are intended to be in conformance with (and not in addition to) the requirements of the Extended Use Covenant (provided that the Extended Use Covenant is not modified to reduce the number of restricted units as set forth above) and do not impose any additional obligations or restrictions not set forth therein; provided however, in the event that the income of a household in a rental unit on the Property increases in excess of the allowable maximum income and no longer complies with the affordability requirements of this Agreement, Owner shall make the next available unit of the appropriate type available to a compliant household, in accordance with Section 42 of the Internal Revenue Code of 1986, as amended; and

(c) Ensure that the Project qualifies and will continue to qualify in all respects under the provisions of said Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland.

2. Term. Expressly subject to Paragraph 3 of this Agreement, this Agreement shall be in effect beginning on July 1, 2024 and ending forty (40) years later on June 31, 2064, or until one of the following occurs: (a) the Project is not owned or used for the provision of rental housing and related facilities to low income households at limited rents, pursuant to the Extended Use Covenant; or (b) the Project does not comply with Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland, as amended; or (c) the payment in lieu of taxes is not necessary for the continued financial feasibility of the Project, as solely determined by the City pursuant to Paragraph 3 of this Agreement (collectively, the "Term").

3. Termination.

(a) Beginning July 1, 2029 and for each successive five (5) year period from that date throughout the Term of this Agreement, the Owner shall submit to the City Finance Director complete audited financial reports for the Project for the previous five (5) years and a projection of the Project's income and expenses for the next five (5) year period. If based on a review of the audited financial reports and the projections for the Project, the City determines that the Project may have net cash from the operation of the Project after payment of all expenses (including, but not limited to, reimbursement of all certified development and construction costs, management fees, investor servicing fees, debt service (including any cash flow debt) and anticipated costs to meet the physical needs of the Project) and an seven percent (7%) return on the tax credit equity investment, calculated on a cumulative basis, then the City may modify the PILOT at that time to require the Owner to apply such net cash toward the taxes otherwise payable had the Property not been exempt from ordinary City real property taxes based on the assessment for City real property taxes for the Project, or the City may decide that a PILOT is no longer needed and may choose to discontinue its obligations under this Agreement, and terminate this Agreement

(b) If the Owner is in default for one hundred eighty (180) calendar days for any payments required under any of the provisions of this Agreement, the City may, at its option, declare a default by providing written notice of the default to the Owner and to the holders of all mortgages or deeds of trust. If within thirty (30) calendar days after such notice, the payments have not been brought current, then the City may, at its option, declare all amounts due as follows: a

sum equal to the total real property taxes which would have been due from the Owner in the absence of this Agreement in such fiscal year, plus all interest, if any, less all amounts actually paid under this Agreement. To enforce its rights under this Paragraph, the City may renegotiate this Agreement, foreclose, or seek any other remedy available at law or in equity, including but not limited to termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, payments due under this Paragraph shall be considered a first lien and a real property tax lien of the City of Annapolis against the Property and superior to any other liens placed upon the Property. Further, notwithstanding anything to the contrary contained herein, the City hereby agrees that any cure of any default made or tendered by the Owner, its affiliate, or any lender, whose security is the Property, or any investor member of Owner (the "Investor Member"), shall be deemed to be a cure by the Owner, and accepted or rejected on the same basis as if made or tendered by the Owner.

(c) In the event of a default under this Agreement by the Owner, which default is other than a monetary default with respect to its payments required under the provisions of this Agreement, the Owner or its affiliate, and the Investor Member shall have a period of thirty (30) calendar days after Owner's receipt and Investor Member's receipt of written notice from the City of such default, to cure such non-monetary default prior to exercise of remedies by the City hereunder, provided that if such default is other than a monetary default as described hereinbefore, and such default cannot be cured or remedied by the Owner or the Investor Member within said thirty (30) day period and the Owner and/or the Investor Member is diligently pursuing such cure or remedy, the thirty (30) day period will be extended for the time necessary to complete such cure or remedy by the Owner and/or the Investor Member, but in no event longer than a total of one hundred twenty (120) days after said written notice from the City to Owner and Investor Member of the default. If any non-monetary default is not cured within said one hundred twenty (120) day period, then the City may terminate this Agreement.

4. Waiver of Property Taxes. Expressly subject to Paragraph 3 of this Agreement, the City shall not levy or impose any City real property taxes upon the Property, or upon the Owner in relation to the Property, during the Term of this Agreement; provided, however, if at any time during the term of this Agreement, the City's real property taxes are less than the PILOT specified in Paragraph 7, the Owner shall pay the ordinary City real property taxes payable had the Project not been exempt. Owner shall not be required to pay both the City real property taxes and the PILOT. For the avoidance of doubt, nothing in this Agreement prohibits the Owner from contesting the real estate tax assessment as if this Agreement were not in effect.

5. Public Services and Facilities. Expressly subject to Paragraph 3 of this Agreement, the City, without cost or charge to the Owner or the tenants of the Property (other than the PILOT specified in Paragraph 7, shall furnish or cause to be furnished to the Owner and the tenants of the Property, public services and facilities of the same character and to the same extent as are furnished from time to time without cost or charge to other dwellings and inhabitants in the City, during the Term of this Agreement.

6. Consent of Owner; Transfer/Exchange of Property.

(a) As long as the beneficial title to the Property is held by the Owner, or by any members, successors or assigns of the Owner who shall continue its use as a qualified low-income housing project pursuant to 26 U.S.C. §42, this Agreement shall not be changed, modified or

rendered null and void without the consent of the Owner, and the privileges and obligations of the Owner and the City in accordance with this Agreement shall remain in full force and effect with respect to the Property during the Term of this Agreement, except as expressly permitted by Paragraph 3 of this Agreement which shall control over this Paragraph 6.

(b) The Owner shall not make any transfer or exchange of the Property which would change its use as a residential rental property during the period of the PILOT.

(c) This Agreement shall not survive a sale or transfer of the Property or the sale or transfer of the partnership interest or other beneficial ownership interest of the Owner in lieu of the sale of the Property unless a continued financial need for the PILOT has been demonstrated and the transfer or sale has been approved by the City Council. Notwithstanding the foregoing, this Agreement may be assigned to a holder of a mortgage or deed of trust in the event of a foreclosure or transfer under said mortgage or deed of trust ("Foreclosure Event"), without the need for City Council approval, provided that the assignee shall be subject to the terms and conditions of this Agreement.

7. Payments in Lieu of Taxes (PILOT). During the Term of this Agreement, the Owner shall make annual payments in lieu of real property taxes for the Property in the amounts set forth in this Paragraph 7 (the "Payments in Lieu of Taxes" or "PILOT"), or real property taxes on the Property, whichever is less, as payment for the public services and facilities furnished from time to time by the City, without other cost or charge for or with respect to the Property, as follows:

(a) For the first City fiscal year of the Term, July 1, 2024 through June 31, 2025, the Owner's annual PILOT payment shall be calculated as being equal to the base amount of Eleven Thousand Six Hundred Dollars and No Cents (\$11,600.00).

(b) For the City fiscal years thereafter until the expiration of the Term of this Agreement, or earlier termination thereof, the annual PILOT payment shall be equal to the previous City fiscal year's PILOT, increased by an annual adjustment factor of four (4) percent.

(c) All PILOT payments shall be paid on a City fiscal year basis covering the period July 1 through June 30 of the following year, the same period as encompassed by a normal real estate tax levy.

(d) All PILOT payments shall be due on the first (1st) day of July of each year and payable on or before September 30th of each year without a penalty being added to the amount due. If any PILOT payment has not been made by September 30th of the year due, then all real property taxes, penalties and interest shall become due and payable in full and subject to any and all collection procedures permitted to the City by the laws of the State of Maryland, and the City may terminate this Agreement

8. Binding Effect. The terms of this Agreement shall be binding on and enforceable against the parties and their respective successors and assigns.

9. Governing Law. In all actions arising from this Agreement, the laws of the State of Maryland shall govern, and the venue for all actions initiated pursuant to this Agreement shall be exclusively the Courts of Anne Arundel County, Maryland. The parties hereby waive jury trial in all actions initiated pursuant to this Agreement.

10. Recitals and Conflicting Terms. The Recitals (WHEREAS clauses) are hereby incorporated into this Agreement.

11. Severability. If any of the provisions of this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

12. Survival. Those paragraphs in this Agreement which by their nature are intended to survive shall survive the termination of this Agreement.

13. Amendment or Modification. This Agreement sets forth the entire agreement between the parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. Except as permitted under Paragraph 3, this Agreement shall not be waived, amended or modified except in writing and signed by the authorized representative(s) of the parties.

14. Notice. Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

To the City: Director, Department of Finance
 160 Duke of Gloucester Street
 Annapolis, MD 21401

Copy to: City Attorney
 160 Duke of Gloucester Street
 Annapolis, MD 21401

To the Owner: Forest Drive LIHTC, LLC
 5 Powell Lane
 Collingswood, NJ 08108

Copy to: NEF Assignment Corporation
 10 S. Riverside Plaza, Suite 1700
 Chicago, Illinois 60606
 Attention: General Counsel

IN WITNESS WHEREOF, the Owner and the City have caused this Agreement to be executed under Seal as of the day and year written above.

ATTEST:

FOREST DRIVE LIHTC, LLC,
a Maryland limited liability company

By: _____

By: Forest Drive MM, LLC,
a Maryland limited liability company,
its Managing Member

By: _____ (SEAL)

M. Brad Ingerman
President

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
(Seal)
City Clerk

By: _____
Gavin Buckley, Mayor

APPROVED FOR SUFFICIENT APPROPRIATIONS
AND AVAILABILITY OF FUNDS:

Joanna D. Dickinson, Director
Finance Department
Source of Funds: _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

Office of Law
D. Michael Lyles, City Attorney