



FREDERICK COUNTY, MARYLAND STAFF REPORT CONCURRENCE FORM

To: Office of the County Executive Date: 03/28/2018
Through (Name of Div. Dir.): Monica L. Grant, Citizens Services Division *M. Grant*
From (Name & Division): Milton J. Bailey, Dept. of Housing & Community Development *M. J. Bailey* **RECEIVED**
Phone #: 301-600-3530

APR 16 2018

Staff Report Topic:

Payment in Lieu of Tax Agreement - Orchard Park Residential, LLC *Office of the County Executive*

Time Sensitive? Yes (if yes, deadline for approval: _____) No

Action Requested by County Executive:

Signature Approval OR Information Only

Staff Report Review:

This staff report has been thoroughly reviewed first by the appropriate divisions/agencies noted on Page 2 followed by those outlined below:

- Budget Office
- Finance Division
- County Attorney's Office

	Initials	Date	Comments Y/N (Page 2)
<input checked="" type="checkbox"/> Budget Office	<i>RCB</i>	<i>4/10/18</i>	<i>N</i>
<input checked="" type="checkbox"/> Finance Division	<i>LL</i>	<i>4/16/18</i>	<i>N</i>
<input checked="" type="checkbox"/> County Attorney's Office	<i>KAM</i>	<i>4/16/18</i>	<i>N</i>

Refer to County Council?

Yes No _____ (To be completed by the Co. Attorney's office.)

- Chief Administrative Officer

4-18-18 *Yes*

- County Executive

Approval to forward to Council? Yes No _____

4/23/18

For Office Use Only

Council Meeting Date: _____ Presenter: _____

Public Hearing? Yes _____ No _____

Requires Council President's Signature? Yes _____ No _____

Other Reviewing Divisions/Agencies:

(Click to place a check mark in the following appropriate spaces.)

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N (noted below)</u>
- - Animal Control			
- - Citizens Services			
- - Economic Development			
- - Emergency Management			
- - Fire & Rescue Services			
- - Health Services			
- - Human Resources			
- - Interagency Information Technologies			
- - Parks & Recreation			
- - Planning & Permitting			
- - Public Works			
- - Sustainability & Environmental Resources			
- - Transit Services			
- - Utilities & Solid Waste Management			
- - Volunteer Fire & Rescue Services			
<input checked="" type="checkbox"/> - Other: <u>S. Vergara, Housing Fiscal Manager</u>	<u>S.V.</u>	<u>4/2/18</u>	<u>N.</u>
<input checked="" type="checkbox"/> - Other: <u>R. Inskeep, Grants Accountant</u>			
- - Other: <u>M. Thom</u>	<u>MT.</u>	<u>4/10/18</u>	<u>N</u>

Elected Officials or Independent Agencies:

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N (noted below)</u>
- - Board of Education			
- - Board of Elections			
- - Board of License Commissioners			
- - Frederick Community College			
- - Frederick County Public Libraries			
- - Internal Audit			
- - Sheriff's Office			
- - Social Services			
- - State's Attorney's Office			

Comments:

1. From: Ray Barnes Date: 4-18-2018
Request Approval on May 1, 2018 County Council Agenda

2. From: _____ Date: _____

3. From: _____ Date: _____

4. From: _____ Date: _____



FREDERICK COUNTY GOVERNMENT

DIVISION OF CITIZENS SERVICES Department of Housing & Community Development

Jan H. Gardner
County Executive

Monica L. Grant, Director
Milton J. Bailey, Director

TO: Frederick County Council

THROUGH: County Executive, Jan H. Gardner

FROM: Monica L. Grant, Division Director, Citizens Services Division
Milton J. Bailey, Director, Dept. of Housing and Community Development

DATE: March 28, 2018

SUBJECT: Payment in Lieu of Tax Agreement – Orchard Park Residential, LLC

ISSUE:

Should the County Council approve and enter into a Payment in Lieu of Tax (“PILOT”) Agreement with Orchard Park Residential LLC, a Maryland limited liability company (the “Owner”), whereby the Owner will receive a fixed annual reduction in regularly assessed property taxes following the development of Orchard Park at Ballenger Run Apartments, Frederick, Maryland?

BACKGROUND:

Project

Orchard Development’s proposed development site is located on Ballenger Creek Pike at 5203-5234 Black Locust Drive, Frederick, MD further identified as tax parcel identification number 28-595441. The subject site is part of a larger planned unit development (PUD), which is approximately 196 acres in size. The proposed new construction will create 210 rental apartments in four separate four-story apartment buildings. The total development cost for the project is \$38,842,498.

All of the units will be restricted to tenants earning no greater than 60% of Area Median Income (AMI). AMI for Frederick County is \$110,300. Sixty percent of AMI for a family of four is \$66,180 and \$43,380 for a single adult. The units will range from one bedroom to three bedroom units and the rents will vary from \$942 to \$1,560 per month. Rents fall under the limits set by the Low Income Housing Tax Credit (LIHTC) program and have an average monthly cost burden adjusted for income and family size of 28.89%. The project will provide high-end finishes and amenities at affordable market rate price points that will reduce the monthly housing cost burden for Frederick County residents making 60% AMI or lower. The units will meet (and exceed) the Moderately Priced Dwelling Unit (MPDU) Requirements of at least 107 MPDUs, for the Ballenger Run PUD. The County’s MPDU requirements will also require that all 210 units have an affordability period of 99 years.

Amenities

Apartments will provide nine-foot ceilings, upgraded flooring, oversized windows, and window treatments throughout. In addition, units will have Energy Star washers and dryers, large closets, designer kitchens and baths, and lightweight concrete sound insulation between floors to mitigate noise. Amenities also include a separate club house with gathering room and kitchen, fitness center, swimming pool, picnic area, bike storage, dog park, and on-site management and maintenance staff. Building will have National Green Building Standards (NGBS) Silver Certification or similar green standard, and have many energy efficient features.

Tenant Service Plan (Frederick County Housing Study and ALICE Report)

The Housing Study published by HR&A in November 2016, places the County's immediate need for affordable housing units at 5,720. Additionally, the ALICE (Asset Limited, Income Constrained, and Employed) Report published by the United Way in 2016, measures the economic cost-burdens of struggling Maryland families. Based on ALICE data, the Frederick County Department of Housing and Community Development (DHCD) has requested developers provide a Tenant Service Plan that outlines support mechanisms the development will implement to empower residents toward greater financial stability. Orchard Park plans to provide the following services to tenants: On-site credit counseling, food bank and tutoring program for grades 1-12; a ride sharing network utilizing a dedicated mobile app that is being developed for the community by Orchard Development; a hand-tool lending program allowing residents to borrow hand tools at no charge for household projects; a CD library; and a community resource reference guide maintained by the leasing office.

Site Plan Approval

Orchard Development completed site plan review and approval processes through the County Planning Commission on December 13, 2017.

Frederick County PILOT Policy

The Frederick County "Payments In Lieu of Tax Policy for Low and Moderate Income Rental Housing Programs" was first established in April 1991 and later revised in June 2008 by the Board of County Commissioners. The intent of this policy is to provide for PILOT agreements to support housing projects located within Frederick County that provide decent, safe, and sanitary housing to low or moderate income citizens. A copy of this policy is attached as Attachment 1.

Negotiated Payments

The Policy provides for negotiated payments in lieu of real property tax payments to support a housing project which consists of low and moderate income rental housing. Negotiated payments in lieu of Frederick County's real property tax might be

- a) Set dollar amounts (for an entire project or by rental unit),
- b) Percentages of what the real property tax would have been, or
- c) Reflect reducing what the real property tax would otherwise have been by a fixed dollar amount (either for an entire project or by rental unit).

Maximum Amounts

Under the current Policy, the maximum amount of taxes effectively waived under PILOT agreements entered into for per project pre fiscal year shall not exceed \$31,200, and the maximum aggregate total of effectively waived taxes resulting from all PILOT agreements during any fiscal year shall not exceed \$312,000. PILOT agreements are recorded in the Frederick County land records and constitute a lien on the project and real property.

Annual Audit

Within ninety (90) days after December 31 of the year in which a PILOT agreement is entered into, and within 90 days of each subsequent December 31 thereafter, the project owner is required to submit an annual audit to the County. This financial report shall be based on an examination of the project's and project owner's books and records, prepared in accordance with generally accepted accounting principles, and shall be prepared and certified to by a Certified Public Accountant registered to practice in the State of Maryland.

Transfer or Exchange of Property

The project owner cannot transfer, assign or exchange ownership of the property or change the use of the project from a residential low or moderate income rental project while the project is subject to the PILOT agreement without a 90 day notification and without written consent by the County.

Right of First Refusal

At the end of a service period (term life of the PILOT) the County has the right of first refusal to purchase the housing project if the PILOT is equal in scope with the regulatory agreement governing the housing project. The project cannot be assigned, sold or transferred during the project service period. The use of the housing units in the project cannot be changed during the service period.

History of Frederick County PILOT Agreements

Frederick County PILOT Agreements for low/moderate income affordable housing projects date back to 1993. Currently, four recorded Agreements exist for the following projects: Weinberg House Broadway Apartments (Interfaith Housing Alliance), Victoria Park (Walkersville Senior LLC), Taney Village Apartments (Taney Village Ltd. Partnership) and 520 North Market Apartments (PIRHL and Interfaith Housing Alliance). Pending are Agreements for Sharpe Square (under negotiation) and Orchard Park at Ballenger Run (subject of this report). Details on each are contained in Attachment 2, which includes the development and developer contact information, project address, number of affordable units, effective end date of each PILOT and the terms. These and all other PILOTS are listed on Attachment 3, which lists the assessment, county tax, taxes waived, and the PILOT payment per project. Other PILOTS include the City of Frederick public housing developments, which fall under federal law, and the Ft. Detrick Central Utility Plant, made under MD Tax Property 7-211, which relates to taxation of property leased from the Federal Government.

Orchard Park PILOT Eligibility

The Owner has entered into a contract with SeD Maryland, LLC, to acquire land and located at 5203-5234 Black Locust Drive, Frederick, MD with settlement planned to occur by June 2018. The Owner intends to create 210 rental apartments in four separate four-story apartment buildings which provide income restricted workforce housing for individuals with a minimum of 210 units reserved for households whose income is at or below 60% of the Area Median Income as calculated and established each Fiscal Year by the U.S. Department of Housing and Urban Development (HUD).

The Owner has met the threshold set by 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 Maryland CDA for a Rental Housing Works loan, and has applied for equity from the sale of Federal Low Income Housing Tax Credits, all of which Owner anticipates will be funded in the amounts requested. The Property will be operated as rental units for income restricted workforce persons pursuant to a regulatory agreement between the Owner and CDA, to be executed in connection with the above described financing of the Project.

Pursuant to the Annotated Code of Maryland, Tax-Property Article, Section 7-506.1 this property is eligible for a PILOT Agreement with the County. If agreed to by County Council, the proposed PILOT Agreement would serve as a contribution by the County to the project and would establish general stability and predictability for the project's real property tax exposure as the Owner secures Tax Credit investors.

Orchard Park PILOT Agreement Overview

Effective Date and Term

The effective date of the Agreement is the date the Owner receives the Final Endorsement of the permanent Loan from HUD. The term begins on the effective date and continues for the 40-year financing obligation. During the term of the Agreement, each fiscal year the Owner shall pay to the County and the City the respective real property taxes due less a the PILOT credit in accordance with the terms of the PILOT Agreement.

PILOT Amount

Beginning with the first full fiscal year after the Effective date of the agreement the County shall credit \$31,200 (PILOT Credit) to the real property taxes due for the property.

A draft PILOT Agreement between the County and owner is included as Attachment 4. The agreement may require certain revisions by HUD or CDA as a condition of financing.

Attached as Attachment 5 is a draft Resolution which if adopted by the County Council will authorize the proposed PILOT Agreement for the Orchard Park property, subject to possible revisions which may be required by HUD or CDA, following a public hearing after the appropriately required public notices in the local newspaper.

RECOMMENDATION:

As a demonstration of local support for the development of affordable housing, staff recommends that the County Council approve and enter into the PILOT Agreement and adopt a Resolution to reflect said approval.

Take the PILOT Agreement and Resolution to public hearing.

Approve? Yes ✓ No _____

Jan H. Gardner
Jan H. Gardner, County Executive
Frederick County, Maryland

4/26/18
Date

FUNDING IMPLICATION: No

Other Pertinent Information: There is no financial implication for the Housing Department. Please note that there would be a reduction in future County real property tax revenue.

ATTACHMENT(S):

- Attachment 1 - Frederick County Payment in Lieu of Tax Policy
- Attachment 2 - Chart of Frederick County PILOT Agreements for Affordable Housing
- Attachment 3 - Chart of All Frederick County PILOTS
- Attachment 4 - Draft PILOT Agreement between County and Owner
- Attachment 5 - Draft PILOT Resolution

PAYMENTS IN LIEU OF TAX POLICY FOR LOW AND MODERATE INCOME RENTAL HOUSING PROGRAMS

The BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, a body corporate and politic of the State of Maryland ("Board") hereby establishes its revised policy for Payments in Lieu of Tax ("PILOT") agreements required to support housing projects located within Frederick County (both within and outside of municipalities) that provide decent, safe, and sanitary housing to low or moderate income citizens when that housing cannot be provided without the waiving of real property taxes. Nothing herein shall be deemed to require the Board to enter into a PILOT agreement in support of an eligible housing project. This revised policy replaces that "Policy for Frederick County Program for Payments in Lieu of Taxes in Support of Low/Moderate Income Housing" adopted by the Board on April 15, 1991.

1. Definitions

- a. Project – A housing development complying with the requirements and intent of this Policy, which, by virtue of Board resolution and PILOT agreement by and between the Board and the project owner, is authorized to pay a negotiated amount in lieu of Frederick County real property tax.
- b. Frederick County Real Property Tax – That real property tax which would normally be collected by Frederick County Government based on the full-assessed value of a property and its improvements at the tax rate in effect at the time of collection. State of Maryland and municipal real property taxes, County fire and rescue tax, other special taxing district and community development agreement taxes and assessments, and other fees or charges from government entities shall not be subject to a PILOT agreement and shall be paid by the project or property owner.
- c. Payments in Lieu of Tax ("PILOT") Agreement – An agreement between the Board and project owner for the payment of a negotiated amount in lieu of payment of Frederick County real property tax on an approved housing development, either new construction or rehabilitation, that provides rental housing for low or moderate income citizens.
- d. Low to Moderate Income Household – A household whose gross income is at or below the income limit established by the U.S. Department of Housing and Urban Development (HUD), the Maryland Community Development Administration (CDA), or other funding agency, at the time of agreement. Unless otherwise required or appropriate, HUD limits will be used rather than those of another agency.
- e. Regulatory Agreement – A recorded agreement between a public agency lender and the project owner covering administrative, occupancy, and financial requirements of the loan.

2. Resolution Required For PILOT Agreement

The Board may, by resolution, authorize the County to enter into a PILOT agreement if permitted by Maryland statutes and if it has been determined:

- a. The proposed housing project will serve the public purpose of providing decent, safe, and sanitary housing for low to moderate income citizens, at rents that are not attainable on the open market, and where the granting of tax relief through the PILOT program is essential to the attainment of those rents;
- b. A principal funding agency, such as HUD or CDA, requires a significant local contribution from the County before it will finance a qualifying project, and the PILOT program will be acceptable as that contribution;
- c. The PILOT agreement is essential to the success of a County funded project, such as one funded with Community Development Block Grant funds; or
- d. The PILOT agreement will provide sufficient savings to a project to permit qualifying housing to be created without the utilization of HUD, CDA, or other public agency's financing.

3. Project Eligibility

Any project that the Board determines facilitates or fulfills the public purpose of providing low to moderate income housing may be eligible for a PILOT agreement. Eligible projects may be located anywhere within Frederick County, within or outside of municipalities, on properly zoned and serviced sites.

4. Joint City-County Participation

For projects located within municipal limits of The City of Frederick ("City"), the Board will not authorize a PILOT agreement unless there are assurances that the City will enter into a similar agreement, with essentially identical terms. For projects located within other Frederick County municipalities, the Board will not authorize a PILOT agreement unless there is approval of the project by the municipality within which the project is located.

5. Annual Audit Required

Within ninety (90) days after December 31 of the year in which a PILOT agreement is entered into, and within 90 days of each subsequent December 31 thereafter, the project owner shall submit to the Frederick County Government Division of Finance and the Frederick County Government Department of Housing and Community Development a complete operating financial report in such detail as may be required by the Division of Finance. This financial report shall be based on an examination of the project's and project owner's books and records, prepared in accordance with generally accepted accounting principles, and shall be prepared and certified to by a Certified Public Accountant registered to practice in the State of Maryland.

6. Cash Distributions Limited

The project owner shall not be entitled to any cash distribution except as permitted in accordance with the Regulatory Agreement and the PILOT agreement.

7. Transfer or Exchange of the Property

- a. The project owner shall not transfer or exchange ownership of the project or property or otherwise change the use of the project from a residential low or moderate income rental project while the project is subject to a PILOT agreement, except as permitted by the Regulatory Agreement and with the advance written consent of the Board.
- b. In the event the project owner wishes to transfer or exchange ownership of the property or project or change the use of the project while the project is subject to a PILOT agreement, the owner shall notify the Board (and the City if a joint project), in writing, at least ninety (90) days prior to undertaking any such action, and must obtain advance written consent of the Board (and the City if a joint project) for such transfer, exchange or change in the nature of the project. Absent such advance written consent, the project owner shall be deemed to be in material default under the project PILOT agreement and the Board may exercise all available rights under the PILOT agreement, at law and in equity.

8. PILOT Payments

- a. Except as set forth below, negotiated payments in lieu of tax under PILOT agreements may be established in such manner as the Board believes necessary to support a project and carry out the intent of this Policy to support low and moderate income rental housing. For example, negotiated payments in lieu of Frederick County's real property tax might be set dollar amounts (for an entire project or by rental unit), percentages of what the real property tax would have been, or reflect reducing what the real property tax would otherwise have been by a fixed dollar amount (again, either for an entire project or by rental unit). Negotiated payments in lieu of tax shall reflect fiscal, rather than calendar, year periods. Projects that come on line during the first six months of a fiscal year shall pay one half of what the negotiated payment for the entire fiscal year would have been.
- b. In no event shall a project's payments in lieu of tax be less than \$100 dollars per qualifying rental unit, subject to such annual increase as the Board may determine to be appropriate.
- c. In the case of projects involving the Board and City, since both County and City real property taxes would otherwise be collected, the Board and City must agree on required payments in lieu of taxes. On such joint projects the division of payments in lieu of taxes will be in accordance with the ratio each tax rate bears to the total combined tax rate.
- d. Payments in lieu of tax for rehabilitation projects shall be determined considering a project's assessed value and the tax rate in effect immediately prior to rehabilitation, so that no rehabilitation project shall pay less in taxes after entering into a PILOT agreement with the Board than paid before the PILOT agreement.

9. Term of PILOT Agreement

Each PILOT agreement shall remain in effect for a predetermined number of years; “evergreen” agreements are not permitted. The term of a PILOT agreement may, with the Board’s consent, coincide with the term(s) set by another agreement, such as an Internal Revenue Service low income housing tax credit agreement or CDA regulatory agreement.

10. Termination Prior to Expiration of the Term

If, during the term of a PILOT agreement the project owner removes any or all of the qualifying housing units from service as low to moderate income rental housing, then it shall be as though there never were a PILOT agreement on the units removed from low to moderate income housing, and all Frederick County real property tax that would have been imposed from the initial effective date of the PILOT agreement, less any payments previously made, will be immediately due and payable to the County.

11. Recordation of Agreement

PILOT agreements shall be recorded in the Frederick County land records and shall constitute a lien on the project and real property.

12. Maximum Dollar Limits

- a. The Board does not intend that the maximum amount of taxes effectively waived under PILOT agreements entered into during any fiscal year exceed \$31,200.
- b. The maximum aggregate total of effectively waived taxes resulting from all PILOT agreements during any fiscal year shall not exceed \$312,000

13. Notification Requirement

While the project is subject to a PILOT agreement, written notification from the project owner of anticipated project disposition must be given the Board in writing at least eighteen (18) months, but no more than twenty-four (24) months, prior to the termination of any agreement that requires the project to remain as low or moderate income rental housing.

14. Right to First Refusal

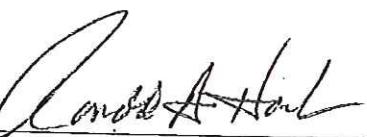
If the PILOT is coterminous with the regulatory agreement, the Board must have the right of first refusal to purchase a PILOT agreement project at the end of the service period at a cost reflecting the value established by the primary lender, regulatory agreement or project fair market rate, or the minimum purchase price provided in Section 42(i)(7) of the Internal Revenue code of 1986, as amended, whichever is lowest. The Board shall have ninety (90) days from receipt of notification of Owner of intention to sell and presentation of a bona fide offer.

15. Incorporation Into PILOT Agreements.

All PILOT agreements must incorporate as a term and condition this Payments In Lieu of Tax Policy for Low and Moderate Income Rental Housing Programs.

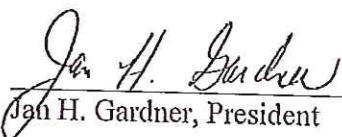
Approved by the Board of County Commissioners of Frederick, Maryland on June 24, 2008.

ATTEST:

By: 

Ronald A. Hart
County Manager

BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND

By: 

Jan H. Gardner, President

Attachment 2 – Chart of Frederick County
PILOT Agreements for Affordable Housing

Development/Developer		Agreement Date	Property Address	# of Affordable Units	Effective End Date	Tax ID #	Terms	Developer Contact Information
1	Weinberg House/ Broadway Apts Ltd Ptnshp/ Western MD Interfaith Housing	11/24/1993	222 Broadway St. Frederick (Broadway Apts.) 21701	24 apts	12/31/2025 30 years	02-111748	Min \$100/unit max \$250/unit 2% increase per unit per year	Interfaith Housing Alliance - Patricia Motter, Dir. Pmottter@interfaithhousing.org 301-662-4225
2	Victoria Park/Walkersville Senior LLC	7/28/2008	105 Sandstone Dr. (Victoria Park) Walkersville MD	80 apts	7/28/2018 10 years	26-509904	\$100 reduction per unit per year	Osprey Property Co. 1212 York Rd. Suite A Timonium MD 21093 Lydia Clark 410-337-8240
3	Taney Village Apts /Taney Village Ltd. Partnership	9/25/2014	1421 Taney Ave. Frederick (Taney Village) 21702	131 apts	9/25/2054 40 years	02-113287	1st year pre-rehab tax, then 2% cap on prior year tax bill	Enterprise Homes 312 N. MLK Blvd Baltimore 21201 Louis Kiang 410-230-2129 lkiang@enterprisehomes.com
4	North Market Street Apartments (under construction)	8/23/2016	520 N. Market St. Frederick (North Market Street Apts) 21701	53 apts	8/23/2036 40 years	02-020637 02-020866	\$400/ yr per unit, 2% increase per year on affordable units; actual tax on market rate units	Interfaith Housing Alliance, Inc. Patricia Motter, Executive Dir. Pmottter@interfaithhousing.org 301-662-4225
5	Sharpe Square (in process)	Pending	820 Motter Ave Frederick (Sharpe Square) 21701	86 apts		02-106205		Pax Edwards, LLC /Buckeye Dev Madison Ave Frederick 21701 Scott Link 443-440-5100 slink@pax-edwards.com
6	Orchard Park at Ballenger Run (in process)	Pending	5203-5234 Black Locust Drive (Orchard Park at Ballenger Run) 21701	210 apts		02-020637 02-020866	Flat \$31,200 per year on reduction in taxes for affordable units	Orchard Development Corporation Robert De Santis 410-564-2215 robert@orcharddevelopment.com

Attachment 3 – Chart of All Frederick County PILOTS

Frederick County PILOTS FY18

Low/Mod Income Housing PILOTS		Expiration Date	Assessment	County Tax	Taxes Waived	PILOT	Potential Taxes Waived
Current							
Walkersville Senior LLC (Victoria Park)	26-512204	7/28/2018	\$ 4,964,767.00	\$ 52,526.53	\$ (8,000.00)	\$ 44,626.53	\$ (8,000.00)
Taney Village	02-113287	9/25/2054	9,530,600.00	\$ 89,578.11	-\$	\$ 89,015.80 ¹	(31,200.00)
Interfaith Housing (Broadway Apartments)	02-111748	12/31/2025	748,600.00	\$ 7,017.38	-\$ (3,551.46)	\$ 3,455.92 ²	(3,531.46)
Total Current Housing PILOTS			\$ 149,222.02	\$ (11,531.46)	\$ 137,128.25		
Approved but not complete							
520 N. Market Street	02-020637, 02-020866	8/23/2036	Project not complete		\$ (31,200.00)		(31,200.00)
Proposed							
Orchard Park at Ballenger Run	New Construction						(31,200.00)
Sharpe Square	New Construction						(136,331.46)
Other PILOTS (Not under Low/Mod Income Housing Policy)							\$
City of Frederick Housing Authority							
Lincoln	02-0637778		2,470,300.00	23,072.60			
Canter	02-063751		2,278,800.00	21,283.99			
Catoctin View/Catoctin Manor	02-0637846		13,168,133.00	122,990.35			
Lucas	02-063794		4,398,700.00	41,037.15			
Sagner Court	02-463598		120,033.00	1,121.11			
	02-463601		120,433.00	1,124.84			
	02-463628		120,733.00	1,127.65			
	02-463636		120,333.00	1,123.91			
	02-463652		120,333.00	1,123.91			
	02-463679		120,233.00	1,122.98			
Total City Housing Authority			\$ 215,128.51	\$ 165,740.70	\$ 49,387.81		
Ft. Detrick Central Utility Plant	02-263963	6/30/2028	7,677,267.00	71,705.67	-\$ (35,309.67)	\$ 36,396.00 ⁴	

¹The PILOT for Taney Village is the amount of taxes based on FY15 base assessment plus 2% per year. Any increase over 2% is the amount of taxes waived. For FY18, the assessment did not increase so no taxes were waived.

²The PILOT for Interfaith is typically billed in January. These amounts are for FY17.

³The City of Frederick Housing Authority agreement does not fall under our Low/Mod Income Housing Policy – it falls under federal law, not state.

⁴The Ft. Detrick CUP is not a low/mod income housing PILOT. It is a PILOT under MD Tax Property 7-211, which relates to taxation of property leased from the Federal Government.

The maximum amount of taxes waived under housing PILOT agreements per project per fiscal year should not exceed \$32,200 shall not exceed \$32,000 during any fiscal year.

**PAYMENT IN LIEU OF TAX AGREEMENT
(Orchard Park @ Ballenger)**

This Payment In Lieu Of Tax Agreement (the “PILOT Agreement”), made and entered into as of the _____ day of _____, 2018 (the “Agreement Date”), by and between Orchard Park Residential, LLC (the “Owner”), and Frederick County, Maryland, a body corporate and politic of the State of Maryland (the “County”).

WITNESSETH

WHEREAS, Owner has entered into a contract to acquire land located at 5203-5234 Black Locust Drive, Frederick County, Maryland, further identified as tax parcel identification number 28-595441 (the “Property”); and

WHEREAS, Owner intends to construct 210 units on the Property for use as an income restricted housing project (the “Project”), with 11 units reserved to provide housing for households with income is at or below 50% of the Area Median Income and 199 units reserved for households whose income is at or below 60% 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 (“HUD”); and

WHEREAS, once constructed, the Project will satisfy the requirements of Chapter 1-6A of the Frederick County Code, which requires construction of a minimum of 107 Moderately Priced Dwelling Units (“MPDUs”) for the Ballenger Run PUD; and

WHEREAS, in further satisfaction of Chapter 1-6A of the Frederick County Code, the Owner intends to preserve the Property and Project for workforce housing serving income restricted persons for a minimum of 99 years; 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 Maryland CDA 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 (defined below); 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 Maryland CDA (the “Regulatory Agreement”), executed in connection with the above described financing of the Project; 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, and County 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 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 has requested that the County agree to enter into this PILOT Agreement; and

WHEREAS, County has agreed to enter into this PILOT Agreement and accept payment of a reduced sum of money in lieu of Frederick County real property taxes, provided that the Owner at all times during the Term of this PILOT Agreement (as defined below) 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 herein 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 of the Final Endorsement of the permanent loan (the "Effective Date"), and except as provided in Section 4 below, shall remain in full force and effect for forty (40) years from the Effective Date. The Owner shall promptly provide written notification to the County of the date of Final Endorsement. Notwithstanding anything to the contrary contained herein, the Term of this PILOT Agreement shall 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.

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 County shall credit Thirty-One Thousand, Two Hundred Dollars (\$31,200) (the “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. The County reserves the right to credit only a proportional amount of the PILOT Credit in any fiscal year when certificates of occupancy for all of the buildings that make up the Project have not yet been issued.

(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 County. The PILOT Credit provided for herein 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, full County real property taxes shall be due and immediately payable 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 benefit from the PILOT Credit described in Paragraph 2 above is conditioned upon compliance at all times during the

Term of this PILOT Agreement with the following conditions. Unless otherwise specified below, the failure to comply with any of these conditions shall effect an immediate termination of this PILOT Agreement without further notice being required to be given to Owner:

- (a) The Owner shall comply in all respects with the applicable provisions of the Tax-Property Article and other provisions of the Annotated Code of Maryland, the Frederick County Code, and with all applicable rules and regulations, as they relate to the Property;
- (b) The Owner shall not refinance, transfer, sell, or exchange the Property if that refinancing, 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 continued 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 the sole discretion of County 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'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 Director of the Finance Division ("Finance Director") an annual financial report audited by an independent Certified Public Accountant in accordance with Generally Accepted Accounting Principles. Furthermore, the Finance Director, or designee, 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 shall be sufficient to verify that each of the 210 housing units have been rented exclusively to income qualified workforce 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 after 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 applicable sections of the Annotated Code of Maryland, with the Frederick County 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, or within 30 days after receiving such a request from the Finance Director;

(g) The Owner shall timely pay the full amount of property taxes due, less the PILOT Credit, and all other taxes and charges (including interest) applicable to the Property. Interest on overdue payments, in the same amount as charged to other delinquent County taxpayers, shall be added to the amount(s) due and collected by the County 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 210 housing units are available for qualifying persons during the Term of this PILOT Agreement, by virtue of 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 not a qualified person, then it shall be as though there had never been a PILOT Agreement on the unit(s) removed from 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 remedy 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 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 real property tax that would have been imposed from the Effective Date of the PILOT Agreement for the unit, less any property taxes already paid for the out of service unit, will be immediately due and payable to the County. 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 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). An unoccupied or empty unit shall not be deemed to be out of service, 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 rental project for income restricted workforce housing without risking immediate termination of this PILOT Agreement. In the event, however, that the Owner wishes to transfer or exchange the Property at any time during the Term of this PILOT Agreement, and the transferee agrees to maintain the Property as a residential rental project for income restricted qualifying persons and in the PILOT Program, the Owner must notify the County and obtain prior written consent from the County as described in Paragraph 4(c) above.

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 fails to complete the Project as required under this Section, then 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, 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 the parties.

10. Right of First Refusal.

(a) The Owner hereby grants to the County 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 at least ninety (90) days' 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 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 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 will be deemed to have refused the Right of First Refusal. If the County elects to exercise the option, it shall do so in writing during the fifteen (15) business 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 under their Transfer of Physical Assets (TPA) procedures.

11. 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.

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

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 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 Agreement Date, 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, 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 Owner, then to:

Orchard Park Residential, LLC
Attention: Robert DeSantis
5032 Dorsey Hall Drive
Ellicot City, MD 21042

Copy to:

Kevin J. Kelehan
Carney, Kelehan, Bresler, Bennett & Scherr, LLP
10715 Charter Drive, Suite 200
Columbia, Maryland 21044
Tel: 410-740-4600 ex. 205
Fax: 410-730-7729
E-Mail: <mailto:bjk@carneykelehan.com>

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, Orchard Development Corporation, a Maryland corporation, 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.

WITNESS:

ORCHARD PARK RESIDENTIAL,LLC , a Maryland corporation

By: _____

By: _____

Name:

Title:

WITNESS:

FREDERICK COUNTY, MARYLAND

By: _____

By: _____

Jan H. Gardner, County Executive

STATE OF MARYLAND, COUNTY OF _____

I HEREBY CERTIFY that on this _____ day of _____, 2018, before me, the undersigned officer, personality appeared [name] _____, who acknowledged him/herself to be the [title] _____ of, Orchard Development Corporation, a Maryland corporation, and that he/she, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his/her name for the corporation.

Witness my hand and Notarial Seal.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND, COUNTY OF FREDERICK, MARYLAND TO WIT:

I HEREBY CERTIFY that on this _____ day _____, 20____, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Jan H. Gardner, County Executive of Frederick County, Maryland, a body politic and corporate of the State of Maryland, and acknowledged the foregoing instrument to be the act of said body politic and corporate. And at the same time, she made oath in due form of law that she is the County Executive of said body politic and corporate and is duly authorized to make this acknowledgment on its behalf.

Notary Public

My Commission Expires: _____

DRAFT 1.18.18

THE EFFECTIVE DATE OF THIS RESOLUTION IS _____, 2018

RESOLUTION NO. _____

RE: Orchard Park at Ballenger Run PILOT PROJECT

A RESOLUTION to authorize Frederick County, Maryland (the “County”) to enter into an agreement with Orchard Park Development Corporation., a Maryland corporation, (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 5203-5234 Black Locust Drive, Frederick County, Maryland, further identified as tax parcel identification numbers 28-595441 (the “Property”), and to construct thereon an apartment development containing at least 210 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 (“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, 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.

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 _____ day of _____, 2018.

ATTEST:

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

Ragen L. Cherney
Council Chief of Staff

By: _____
Bud Otis, President