

AS AMENDED ON SEPTEMBER 23, 2013  
RESOLUTION NO. 2335

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND PROVIDING A PAYMENT IN LIEU OF TAXES (PILOT) TO THE DEVELOPMENT OF RENTAL HOUSING, LOCATED AT 660-680 FITZWATER STREET

WHEREAS, the City Council of the City of Salisbury, Maryland recognizes that there is a significant need for quality housing units in Salisbury for persons with low or limited incomes, especially those who specialize and work in the arts as well as those with disabilities; and

WHEREAS, Rivers Edge Apartments LLC, a Maryland Limited Liability Corporation, proposes to develop and operate a rental housing development comprised of approximately ninety (90) units, known as Rivers Edge Apartments and Studio for the Arts and located at 660-680 Fitzwater Street in Salisbury, MD (the "Project"), all or a portion of which will assist persons of lower income as required by applicable law or regulations; and

WHEREAS, United Needs and Abilities, Inc. and Osprey Property Company LLC have advised the City that financing and economic circumstances warrant a contribution to the project, in the form of a payment in lieu of taxes (PILOT); and

WHEREAS, the City of Salisbury supports this project because it will address the need for quality, affordable housing for persons with lower incomes; and

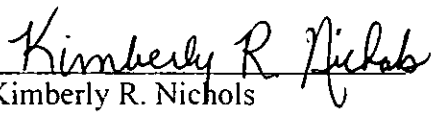
WHEREAS, the City of Salisbury desires to provide a Payment in Lieu of Taxes (the "PILOT"); and .

BE IT FURTHER RESOLVED THAT the City of Salisbury approves a PILOT agreement between Rivers Edge Apartments LLC and the City of Salisbury, attached hereto, provided Rivers Edge Apartments LLC constructs and operates a rental housing project at 680-660 Fitzwater Street for persons with low or limited income in accordance with the guidelines of the Department of Housing and Community Development. The PILOT agreement provides for a reduction of City of Salisbury real estate taxes in the amount of \$100 per unit per year if the project continues to provide affordable housing for persons of lower income for a period of forty (40) years from the date the building is granted a certificate of occupancy; and

BE IT FURTHER RESOLVED THAT, the ~~President of the City Council~~ Mayor be granted the authority to execute said Payment In Lieu of Taxes agreement, which is hereby attached to this resolution, on behalf of the City of Salisbury; and,

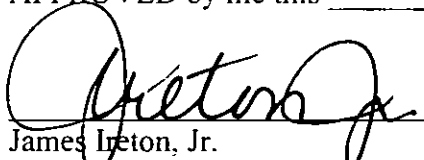
THIS RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on September 23, 2013 and is to become effective immediately upon adoption.

ATTEST:

  
\_\_\_\_\_  
Kimberly R. Nichols  
CITY CLERK

  
\_\_\_\_\_  
Jacob R. Day  
PRESIDENT, City Council

APPROVED by me this 30<sup>th</sup> day of Sept, 2013

  
\_\_\_\_\_  
James Ireton, Jr.  
MAYOR, City of Salisbury

## PAYMENT IN LIEU OF TAX AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between City of Salisbury, MD, a body corporate and politic (hereinafter referred to as the "City"), and Rivers Edge Apartments LLC, a limited liability corporation formed in the State of Maryland (hereinafter referred to as the "Owner").

WHEREAS, the Owner proposes to develop Rivers Edge Apartments and Studio for the Arts, consisting of 90 units of rental housing, located at 660-680 Fitzwater Street in Salisbury, Maryland, and identified under Tax Account Number District 09 Account Number 048243 (the "Property"), for the purposes of providing rental housing to low to moderate income households (the "Project"); and

WHEREAS, Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland, as amended, provides, among other things, that real property in the City may be exempt from City property tax if:

- (a) the real property is owned by a person engaged in constructing or operating housing structures or projects; and
- (b) the real property is used for a housing structure or project that is constructed or substantially rehabilitated under a federal, state or local government program that:
  - (1) funds construction, or insures its financing in whole or in part, or
  - (2) provides interest subsidy, rent subsidy or rent supplements; and
- (c) the Owner:
  - (1) agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the government programs and to renew any annual contributions contract or other agreement for rental subsidy or supplement; or
  - (2) enters into an agreement with the City to allow the property or the portion of the property which was maintained for lower income persons to remain as housing for lower income persons for a term of at least forty (40) years; and
- (d) the Owner enters into an agreement with the City for the payment of a negotiated sum in lieu of applicable City property taxes on the Property; and

WHEREAS, the Owner plans to operate the Project as rental housing for low to moderate income households and intends to comply with Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland; and

WHEREAS, the Owner has demonstrated to the City that an agreement for payments in lieu of taxes is necessary; and

**WHEREAS**, pursuant to City of Salisbury, MD Resolution No. \_\_\_ adopted, September \_\_, 2013, the City Council of the City of Salisbury, Maryland, agreed to enter into an agreement for payments in lieu of taxes for the Project, and authorized the Mayor to enter into this Agreement.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH:** In consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of Section 7—506.1 of the Tax Property Article of the Annotated Code of Maryland, it is agreed as follows:

1. The Owner agrees: (1) that it will operate the Project as rental housing for low to moderate income households and will 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 (herein the "Extended Use Covenant"); (2) it will make ninety (90) units available to households having incomes of no more than 60 percent of the area median income; and (3) that the Project qualifies and will continue to qualify in all respects under the provision of said Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland.

2. Beginning July 1, 2014, or the July 1 following the issuance of certificate of occupancy, whichever is later, the Property shall be exempt from ordinary City property taxes. The payments to be made hereunder by the Owner to the City with respect to the Project shall be in lieu of all ordinary City taxes on real property under the Tax Property Article of the Annotated Code of Maryland. The payments to be made hereunder by the Owner to the City shall be made by the Owner first and accepted by the City through the Fiscal Year 2055, or for forty years following the issuance of certificate of occupancy.

3. This Agreement shall be in effect for forty years, which is anticipated to be through *Fiscal Year 2055, ending June 2055*, and the portion of the property to be maintained for lower income persons shall remain as housing for lower income persons for a term of at least forty (40) years pursuant to Section 7-506.1(a)(2)(iv)2.

4. If at any time during the term of this Agreement, the City real property taxes are less than the Payment in Lieu of Taxes (the "PILOT"); the Owner shall pay the ordinary City real property taxes payable had the Property not been tax exempt.

5. For the *Fiscal Years 2014 through 2054*, the Owner's annual payment in lieu of taxes shall be calculated as follows:

For the Fiscal Year 2014 Owner shall make payment to the City in an amount equal to Fiscal Year 2014 taxes, an amount of the assessed value of the property times the City tax rate minus \$9,000 (such subtracted amount calculated as follows:  $\$100 \times 90 \text{ units} = \$9,000$ ).

6. By July 30<sup>th</sup> of each year, the City shall bill the Owner for the payment which is due by September 30<sup>th</sup> of that year, as set forth in this Agreement.

7. Payments due hereunder will be considered delinquent thirty (30) days after the due date of the bill sent to the Owner. Interest at the rate of one percent (1%) per month shall be charged and collected by the City on all amounts remaining unpaid thirty (30) days after the due date.

8. If the Owner is in default for one hundred eighty (180) days for any payment 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) days of 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, 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. Notwithstanding anything to the contrary which is or might be contained in this agreement, payments due under this paragraph shall be considered a first lien against the Property and superior to any other liens placed upon the Property and may be collected in the same manner as City taxes.

9. 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, provided that the assignee shall be subject to the terms and conditions of this Agreement.

10. For the purposes of this Agreement, all notices shall be hand-delivered or mailed by first class mail or certified mail, return receipt requested or via overnight delivery service. Notices shall be given to the parties as follows:

TO CITY:	Office of Finance/City of Salisbury Government Office Building 125 N. Division Street Salisbury, MD 21801
TO OWNER:	Rivers Edge Apartments LLC c/o Osprey Property Company LLC 175 Admiral Cochrane Drive, Suite 201 Annapolis, Maryland 21401
With a copy to:	Wells Fargo Affordable Housing Community Development Corporation MAC D1053-170 301 South College Street, 17th Floor Charlotte, NC 28202-6000 Attention: Director of Asset Management

Each notice that is sent by one party to the other party at the listed address shall be presumed to have been received three (3) days after the date of mailing, except when prior written notice is given by one party to the other that a party or an address has changed. Notwithstanding any provision to the contrary contained in this Agreement, any person or party not listed in this

paragraph shall not be entitled to notice as may be required by this Agreement, unless one party notifies the other party that additional notice shall also be sent to such person or party.

11. This Agreement shall inure to the parties hereto and their respective successors, assigns, and/or legal representatives.

12. It is understood and agreed by the execution of this Agreement that the City does not waive any rights of governmental immunity which it may have in any damage suits against it, and that the City reserves the right to plead governmental immunity in such suit in law or in equity or such pleading as is appropriate notwithstanding the execution of this Agreement.

13. This Agreement shall be governed by Maryland law and any actions between the parties hereto shall be brought in and vest jurisdiction and venue solely in the Circuit Court for Wicomico County.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be signed in its name by the City Council President, to be attested to by the City Clerk, and to have the City Seal affixed hereto; and the Owner has caused this Agreement to be signed in its name by its Managing Member, duly attested.

RIVERS EDGE APARTMENTS LLC

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_ (Seal)

By: Rivers Edge Manager LLC  
Its Managing Member

By: Osprey Property Company LLC  
Its Administrative Manager

By: Brett N. Guy  
Chief Executive Officer

ATTEST:

Kimberly R. Adels

CITY OF SALISBURY, MARYLAND

James Icton, Jr.  
James Icton, Jr, Mayor

