

RESOLUTION NO. 2912

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND PROVIDING A PAYMENT IN LIEU OF TAXES (PILOT) TO THE DEVELOPMENT OF PEMBERTON MANOR, LLC LOCATED AT 1017 FAIRGROUND DRIVE, SALISBURY, MARYLAND 21801.

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 to moderate incomes; and

WHEREAS, Pemberton Manor, LLC or its assignee, a Maryland limited liability corporation, currently owns and maintains a rental housing development comprised of approximately two hundred nine (209) units, known as Pemberton Manor, located at 1017 Fairground Drive in Salisbury, MD (the "Project"), of which one hundred forty-three (143) units will assist persons of lower income as required by applicable law or regulations ("HUD units"); and

WHEREAS, Pemberton Manor, LLC proposes to renovate all of the HUD units at this rental housing development, make improvements to the landscaping, entrance and fencing of the Project, install security cameras on the Land, and to renovate the non-HUD units as well; and

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

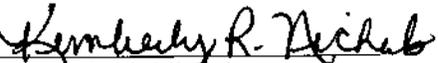
WHEREAS, The City of Salisbury desires to provide for a Payment in Lieu of Taxes (the "PILOT").

BE IT HEREBY RESOLVED THAT the City of Salisbury approves a PILOT agreement between Pemberton Manor, LLC or its assignee and the City of Salisbury, attached hereto, provided Pemberton Manor, LLC renovates, maintains, and operates the rental housing project at 1017 Fairground Drive for persons with low to moderate income in accordance with the guidelines of the Department of Housing and Urban Development's restrictive use covenants. The PILOT agreement provides for a reduction of the City of Salisbury real estate taxes to the amount of \$18,000 per year with an annual increase of 1.5% beginning in the second PILOT Tax Year if the project continues to provide affordable housing for persons of lower income for a period of twenty (20) years, so long as such affordability restrictions are maintained, from the date the PILOT's first payment is due; and

BE IT FURTHER RESOLVED THAT, the 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

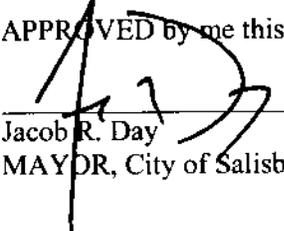
THIS RESOLUTION was introduced, read, and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on February 11, 2019 and is to become effective upon adoption.

ATTEST


Kimberly R. Nichols
City Clerk


John R. Heath
President, City Council

APPROVED by me this 12th day of FEBRUARY, 2019


Jacob R. Day
MAYOR, City of Salisbury



MEMORANDUM

To: Julia Glanz, City Administrator
From: Andy Kitzrow, Deputy City Administrator
Subject: Pemberton Manor PILOT agreement
Date: February 6, 2019

Attached is the resolution to enter into a 20-year PILOT (Payment in lieu of Taxes) Agreement with Pemberton Manor LLC. This company is completing extensive renovations inside Pemberton Manor apartments and beautification around the grounds of the complex.

Pemberton Manor PILOT Payments- Schedule A

<u>Year</u>	<u>Payments</u>
Year 1	\$18,000.00
Year 2	\$18,270.00
Year 3	\$18,544.05
Year 4	\$18,822.21
Year 5	\$19,104.54
Year 6	\$19,391.11
Year 7	\$19,681.98
Year 8	\$19,977.21
Year 9	\$20,276.87
Year 10	\$20,581.02
Year 11	\$20,889.73
Year 12	\$21,203.08
Year 13	\$21,521.13
Year 14	\$21,843.94
Year 15	\$22,171.60
Year 16	\$22,504.18
Year 17	\$22,841.74
Year 18	\$23,184.37
Year 19	\$23,532.13
Year 20	\$23,885.11

PAYMENT IN LIEU OF TAX AGREEMENT

THIS AGREEMENT FOR PAYMENTS IN LIEU OF REAL PROPERTY TAXES (the "Agreement" is made as of _____, 2019, by and between PEMBERTON MANOR LLC (hereinafter referred to as the "Owner"), and CITY OF SALISBURY, MARYLAND, a body corporate and politic of the State of Maryland (hereinafter referred to as the "City").

RECITALS

WHEREAS, the Owner owns that certain tract of real property located at 1017 Fairground Drive, Salisbury, Maryland 21801 that is more particularly described on Exhibit A attached hereto and made a part hereof, and intends to make renovations to all units of the 209 unit rental apartment complex which includes 143 units for persons of lower to moderate incomes ("HUD Units"), known as Pemberton Manor (the "Project"); and

WHEREAS, Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (2012 Replacement Volume, as amended) (the "Code") provides, among other things, that real property outside of Baltimore City may be exempt from county and municipal corporation property tax if: (i) the real property is owned by a person engaged in constructing or operating housing structures or projects; (ii) the real property is used for a housing structure or project that is operated under a federal, State or local government program that funds construction, or insures its financing, or provides interest subsidy, rent subsidy or rent supplements; (iii) the owners thereof enter into an agreement with the governing body of the county and, where applicable, the municipal corporation where the real property is located agree to the payment of a negotiated sum or sums in lieu of the applicable county or municipal corporation real property tax; and (iv) the owner of the real property agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the government program described herein and agrees to renew any annual contributions contract or other agreement for rental subsidy or supplement, or the owner of the real property enters into an agreement with the governing body of the county or municipal corporation to allow the entire 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 5 years; and

WHEREAS, the Owner is engaged in the business of operating housing structures or projects; and

WHEREAS, the Project is a housing structure or project that will be operated in whole or in part within the meaning of Section 7-506.1 of the Code because HUD provides rent subsidy for units at the Project; and

WHEREAS, as part of the PILOT Agreement, Pemberton will covenant and agree, in accordance with the terms and conditions of Section 7-506.1(a)(2)(iv)(2) of the Code, that it or its successors or assigns will operate units at the Project as housing for lower to

moderate income persons for a term of at least 5 years from and after the Date of Resolution of the Project; and

WHEREAS, the Project meets the requirements and criteria of Section 7-506.1 of the Code; and

WHEREAS, the City is duly authorized and empowered to enter into and deliver this Agreement pursuant to the City Resolution (herein defined); and

WHEREAS, pursuant to and in accordance with Section 7-506.1 of the Maryland Property Tax Article and the City Resolution, the City, acknowledging and agreeing that the Project to be operated by the Owner meets the requirements and criteria of Section 7-506.1 of the Maryland Property Tax Article, wishes to enter into this Agreement to accept certain negotiated payments in lieu of city real property taxes so as to facilitate the renovation of the HUD Units at the Project and thereby make available to citizens of the City much needed improved housing for persons of lower to moderate incomes.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that for and in consideration of the mutual covenants, terms and agreements set forth in this Agreement and pursuant to the power and authority of Section 7-506.1 of the Maryland Property Tax Article and the City Resolution, the City and the Owner hereby agree as follows:

1. Definitions. The following defined terms, when and as used in this Agreement, shall have the meanings herein ascribed to them:
 - (a) "City Resolution" means Resolution No. _____ adopted by the City Council on _____, 2019, and approved by the Mayor of Salisbury on _____, 2019.
 - (b) "City Real Property Taxes" means the real property taxes that but for this Agreement would be payable by the Owner to the City with respect to the Project for each Tax Year falling within the Term.
 - (c) "Cumulative Available Savings" means the Maximum Cumulative Savings less the Cumulative Savings.
 - (d) "Cumulative Savings" means the difference between the tax payments due in Schedule A and the regular tax based on the current assessment and tax rates for all years since the inception of the PILOT.
 - (e) "Date of Resolution" means the date as of which the City Resolution takes effect.
 - (f) "HUD Units" means the 143 units at the Project designated for Low to Moderate Income individuals as set forth in the HUD contract for the Project.
 - (g) "Land" means that certain tract of real property, comprising approximately 16

acres, in the aggregate, located at 1017 Fairground Drive, Salisbury, Maryland 21801. The Land is more particularly described in Exhibit A.

(h) "Low to Moderate Income" means incomes as set forth in the HUD contract for the Project.

(i) "Maryland Property Tax Article" means the Tax-Property Article of the Annotated Code of Maryland (2012 Replacement Volume, 2017 Supp.), as the same is amended or supplemented from time to time.

(j) "Maximum Cumulative Savings" means fifty percent (50%) of the cost of the improvements made.

(k) "Payment" means each payment required to be paid by the Owner in lieu of City Real Property Taxes, as set forth in Section 4 of this Agreement.

(l) "Project" means, collectively, the Land and that certain 209-unit housing project, owned by the Owner known as Pemberton Manor, as the same may be renovated, rehabilitated, reconstructed or expanded from time to time.

(m) "Section 7-506.1" means Section 7-506.1 of the Maryland Property Tax Article.

(n) "State" means the State of Maryland.

(o) "PILOT Tax Year" means each one (1) year period commencing on July 1st and ending on June 30th falling within the Term.

(p) "Term" means that period of time commencing on the Date of Resolution and ending on that date which is the day before the twenty first (21st) anniversary of the Date of Resolution.

2. Representations and Warranties by the Owner. The Owner hereby represents and warrants that:

(a) it is engaged in the business of operating housing structures or projects, within the meaning of Section 7-506.1;

(b) the Project is a housing structure or project has a housing and Urban Development contract to receive rent subsidy; and

(c) all necessary action has been taken to authorize the execution of this Agreement by the individual whose signature appears below.

3. Agreements of the Owner.

(a) The Owner hereby covenants and agrees that it will operate the HUD Units at the Project as housing for persons with lower incomes throughout the Term. It is expressly understood that the covenant and agreement of Owner contained in this Section 3 to operate the HUD Units at the Project as housing for persons with lower incomes throughout the Term, as well as all other covenants and agreements of Owner contained in this Agreement, shall be binding on all successors and assigns of Owner in accordance with Section 12 of this Agreement whether the Agreement is recorded or not recorded.

(b) Owner shall abide by the timelines for commencement and completion of the HUD Unit renovations at the Project as set forth below:

- i. Owner shall commence the renovations to the HUD Units at the Project within 90 days (the "Renovation Commencement Date") after Housing and Urban Development's ("HUD") approval of Owner's application to the HUD Community Preservation Program.
- ii. Owner shall complete renovations to at least 15 of the total HUD Units at the Project within 180 days after the Renovation Commencement Date.
- iii. Owner shall complete renovations to at least 50 of the total HUD Units at the Project within 360 days after the Renovation Commencement Date.
- iv. Owner shall complete renovations to at least 100 of the total HUD Units at the Project within 540 days after the Renovation Commencement Date.
- v. Owner shall complete renovations to all 143 HUD Units at the Project within 720 days after the Renovation Commencement Date.
- vi. Owner shall complete renovation of all bathrooms and kitchens throughout the entire development that are not HUD units within 1080 days after the Renovation Commencement Date.

(c) Owner shall install a new camera system at the Project with remote access capability and historical archive, which shall be in substantial conformity with a Camera System plan to be approved by the City of Salisbury before execution, which will allow videos to be shared with the Salisbury Police Department. Said security system shall be installed throughout the entire Land in sufficient numbers to be able to capture video covering the substantial majority of the exterior of the entire Land.

(d) Owner shall erect a fence enclosure around its trash pad at the entrance of the Project.

(e) Owner shall beautify the entrance to the Project from Parsons Road by removing the fence across the sidewalk, and installing high quality landscaping.

(f) Owner shall construct two young children's play areas on the Land for young children to play (ages 1-4 years). Play areas should be large enough to adequately service children from all of the buildings.

(g) Owner shall provide the City with the total cost of renovations, both before, through detailed estimates, and upon completion of work and Owner shall also provide proof to the City that Owner is making an out of pocket equity investment into improvements being made at the property not including federal, State, or local tax, grant, etc. savings. Owner shall provide the City documents that it reasonably requests to enable the City to make a decision that the requirements of this subsection have been met.

4. Payments in Lieu of Real Property Taxes.

(a) The Project shall be exempt from all City Real Property Taxes at all times during the Term provided the requirements of subsection (a) of Section 7-506.1 have been met. Each Payment shall be paid by the Owner and accepted by the City in lieu of all City Real Property Taxes that would otherwise have been payable by the Owner with respect to the Project for the applicable PILOT Tax Year.

(b) Except as provided in Sections 4(c) and (e), the total amount required to be paid by the Owner to the City during the Term, for and with respect to each PILOT Tax Year under this Agreement shall be Eighteen Thousand Dollars (\$18,000.00) per year plus an increase of one and one half percent (1.5%) per unit per year beginning in the second PILOT Tax Year following the Date of Resolution. This Agreement will terminate at year twenty (20) after the Date of Resolution. A schedule of the tax payment is attached as schedule A and incorporated herein

i. For each tax year, the Cumulative Savings will be calculated. If in any year the Maximum Cumulative Savings would be exceeded with the tax payment in Exhibit A, this PILOT agreement shall terminate and the payment due that year shall be the regular tax payment based on the then current assessment and rate less the Cumulative Available Savings. After that year, no future PILOT savings will be available in future years and all future payments will be based on the then current assessments and tax rates.

(c) In the case of any PILOT Tax Year falling partly within the Term at the outset or conclusion thereof, the applicable Payment shall be prorated based upon the number of days in the Term falling within such PILOT Tax Year.

(d) The Payment required under Section 4(b) above for each PILOT Tax Year shall be due and payable on or before March 31st of the following PILOT Tax Year.

(e) Notwithstanding anything to the contrary set forth elsewhere in this Agreement, the Payment otherwise required to be paid by the Owner with respect to a PILOT Tax Year shall never exceed the City Real Property Taxes that would otherwise have been due and payable with respect to the Project for such PILOT Tax Year.

(f) For all periods of time prior to commencement of the Term, the Owner shall pay City Real Property Taxes with respect to the Project based upon the assessed value of the

Land, as reflected in the real property tax records of the City as of the date of this Agreement, and the applicable real property taxes rates of the City in effect for such times.

(g) If any Payment is not paid by April 1st of the year immediately following the PILOT Tax Year for which the Payment is due, interest shall be payable thereon at the rate of ten percent (10%) per annum accruing as of the above-referenced dates until paid.

(h.) 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 sixty (60) 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.

5. Sale or Transfer of Project. In the event of the sale or other transfer of Owner's right, title and interest in and to the Project, which is expressly permitted hereunder, Owner shall be relieved of all obligations and liabilities under this Agreement accruing after the date of such sale or transfer, and the purchaser or transferee of Owner's right, title and interest in and to the Project shall automatically, without the execution of any further documentation, become responsible for all obligations and liabilities of Owner under this Agreement accruing from and after the date of such sale or transfer. Any subsequent sales or transfers shall likewise relieve the seller or transferor of all obligations and liabilities under this Agreement accruing from and after the date of sale or transfer, and the purchaser or transferee shall automatically become responsible therefor.

6. Term. This Agreement shall terminate at year twenty-one (21) after the Date of Resolution. The property shall be assessed and reassessed from time to time as though for purposes of City taxation according to the regular methods and practices applicable to other real property of a similar classification in the City of Salisbury.

7. Notices. For purposes of this Agreement, all notices shall be in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested or overnight mail. Notices shall be given to the parties as follows:

IF TO THE CITY, THEN TO:

City of Salisbury
125 N Division Street
Salisbury, MD 21801

IF TO THE OWNER, THEN TO:

575 Route 70, 2nd Floor
Brick, NJ 08723
Attn: Legal Department

And to:

1017 Fairground Drive
Salisbury, Maryland, 21801
Attn: Pemberton Manor LLC

Any party to this Agreement may modify its address to which notice to it shall be sent, by delivery of notice to the other parties hereto in accordance with the foregoing. Each notice that is sent by one party to this Agreement in accordance with the foregoing shall be presumed to have been received on the three (3) business days after the date of mailing, unless sent via overnight mail in which case it will be presumed to be received on the next business day. Notwithstanding any provision to the contrary contained in this Agreement, any person or party not listed in this section shall not be entitled to notice as may be required by this Agreement, unless one party notifies the other parties that additional notice shall also be sent to such person or party.

8. Entire Agreement Headings. This Agreement contains the entire agreement of the parties to this Agreement with respect to the matters herein set forth. All other agreements and understandings of the parties to the Agreement, written or oral, if any, are merged into this Agreement. The headings set forth at the beginning of each of the sections of this Agreement are inserted for convenience of reference only and shall not be deemed to have any independent legal significance or meaning whatsoever.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

10. Assignment. This Agreement may be assigned to a holder of a mortgage or deed of trust in the event of a foreclosure under said mortgage or deed of trust, provided that such assignee shall be subject to the terms and conditions of this Agreement. This Agreement may also be assigned to any member controlled by Pemberton Manor LLC, the Managing Member of Pemberton Manor LLC or any subsequent owner of the Project, or transferee, or successor or assignee, upon written notice to the City. No consent by the City shall be required.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and run with the Project.

12. Recording. This Agreement may be recorded in the land records.

13. Recitals. The recitals set forth at the beginning of this Agreement shall be deemed to be a part of this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed this Agreement under seal on and as of the date first set forth above.

WITNESS/ATTEST: PEMBERTON MANOR LLC

WITNESS/ATTEST: CITY OF SALISBURY, MARYLAND

Approved as to legal sufficiency this

___ day of _____ 2019

City Attorney

STATE OF _____, COUNTY OF _____

On this the ___ day of _____, 2019, before me, a Notary Public, personally appeared _____, who acknowledged himself to be the _____ of _____, and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the _____ by himself as _____.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

STATE OF _____, COUNTY OF _____

On this the ____ day of _____, 2019, before me, a Notary Public, personally appeared _____, who acknowledged himself to be the _____ of _____, and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the _____ by himself as _____.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____