



## ANNE ARUNDEL COUNTY OFFICE OF LAW

### Legislative Summary

**To:** Members, Anne Arundel County Council

**From:** Kelly Phillips Kenney, Supervising County Attorney /s/

**Via:** Gregory J. Swain, County Attorney /s/

**Date:** March 6, 2023

**Subject:** Bill No. 17-23 – Payment in Lieu of Taxes – The Villages at Marley Station, Glen Burnie, Maryland – Amendment

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This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 17-23.

### Background

Anne Arundel County Council Bill No. 67-22, adopted on July 25, 2022, approved the terms and conditions for payments in lieu of taxes (“PILOT”) for property known as The Villages at Marley Station, which is located at 7841 Bruton Drive, Glen Burnie (the “Property”), and authorized the County Executive to enter into a PILOT Agreement consistent with those terms and conditions. The PILOT Agreement was entered into on September 12, 2022, and a copy is attached hereto as Exhibit 1.

PILOT Agreements are authorized by State law for certain types of properties, including but not limited to, housing for persons of limited income, subsidized housing, housing commission or housing authority properties, and housing for senior citizens. Md. Code Ann., Tax-Prop., §§ 7-501, *et seq.* The State law allows a county to exempt those specific properties from county real property taxes if certain conditions are met, including entry into an agreement for a negotiated amount in lieu of property taxes. The agreement must be entered with the owner of the property and the governing body of the county, which in Anne Arundel County, requires approval by both the County Council and the County Executive. Once a PILOT is in place and the conditions are met, the owner pays the negotiated amount, rather than any County real property taxes.

The PILOT Agreement entered into pursuant to Bill No. 67-22 provides that 757 units will be available to households earning 60% and below the area median income. Since the time the PILOT Agreement was entered into, the owner of the Property has determined that it needs

**Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.**

additional time to subject existing units to income restrictions required by the Agreement to avoid displacing current residents.

### **Purpose**

The purpose of Bill No. 17-23 is to authorize the County Executive to enter into an Amendment to PILOT Agreement with Fairfield Marley Station LP to decrease the number of units currently required to be available for households of limited income, and to provide a deadline for making additional units available for households of limited income.

### **Bill No. 17-23**

#### **SECTION 1.**

This section authorizes the County Executive to enter into the Amendment to the PILOT Agreement, which is attached to the Ordinance as Exhibit A. The Amendment to the PILOT Agreement sets forth a new paragraph 1(b), which revises the number of units that are to be made available to various income levels. Specifically, five hundred eighty-four (584) units (including vacant units) shall be initially available to households earning 60% and below the area median income; and as of December 31, 2026, that number of units shall be at least seven hundred and forty-five (745) units (including vacant units). Paragraph 9 is also amended to change the first date for the Owner to provide financial reports to the County from July 1, 2022 to July 1, 2023.

#### **SECTIONS 2.**

This specifically provides that all other terms of Bill No. 67-22 and the PILOT Agreement remain in full force and effect.

#### **SECTION 3.**

This section provides that the Ordinance shall take effect 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you.

cc: Honorable Steuart Pittman, County Executive  
Christine Anderson, Chief Administrative Officer  
Jeff Amoros, Chief of Staff  
Peter Baron, Chief Strategy Officer  
Chris Trumbauer, Budget Officer  
Jenny Jarkowski, Planning and Zoning Officer  
Cindy Carrier, Long Range Planning  
Erin Shearman Karpewicz, Arundel Community Development Services  
Billie Penley, Acting Controller

**AGREEMENT BETWEEN  
FAIRFIELD MARLEY STATION LP  
AND ANNE ARUNDEL COUNTY, MARYLAND**

THIS AGREEMENT, Made this 12 day of September, 2022, by and between Anne Arundel County, Maryland, a body corporate and politic (hereinafter referred to as the “County”), and Fairfield Marley Station LP, a limited partnership formed in the State of Delaware (hereinafter referred to as the “Owner”).

WHEREAS, the Owner is the owner of seven hundred and fifty-seven (757) units of rental housing, located at 7841 Bruton Drive, Glen Burnie currently identified under the Tax Account Number 3000-2066-7800 (the “Property”), for the purposes of providing rental housing to low 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 County may be exempt from County property tax if:

(i) the real property is owned by a person engaged in constructing or operating housing structures or projects; and

(ii) 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

(iii) the owner and the governing body of the county enter into an agreement for the payment of a negotiated sum in lieu of applicable County property taxes on the Property; and

(iv) 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 County 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 five (5) years; and

WHEREAS, the Owner will operate the Project as rental housing for low 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 County that an agreement for payments in lieu of taxes is necessary; and

WHEREAS, pursuant to Anne Arundel County Council Bill No. 67-22, adopted July 25, 2022, the County Council of Anne Arundel County, Maryland, approved the terms and conditions for payments in lieu of taxes for the Project, and authorized the County Executive 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: (a) that it will operate the Project as rental housing for low income households and will limit rents pursuant to the Low Income Housing Tax Credit Covenant between the Owner and the Community Development Administration, a unit of the Division of Development Finance of the Maryland Department of Housing and Community Development (herein the "Extended Use Covenant"); (b) that, with Payment in Lieu of Taxes ("PILOT"), it will make seven hundred fifty-seven (757) units available to households earning 60% and below the area median income; (c) that the Project qualifies and will continue to qualify in all respects under

the provisions of said Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland.

2. Beginning *in Fiscal Year 2023 (July 1, 2022)*, the Property shall be exempt from ordinary County property taxes. The payments to be made hereunder by the Owner to the County with respect to the Project shall be in lieu of all ordinary County 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 County shall be made by the Owner first and accepted by the County through Fiscal Year 2062.

3. This Agreement shall be in effect through *Fiscal Year 2062, ending June 30, 2062*, or until one of the following occurs: (a) the Project is not owned or used for the provision of rental housing and related facilities to low income households at limited rents, pursuant to the Extended Use Covenant; (b) the Project does not comply with Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland, as amended; or (c) the payment in lieu of taxes is not necessary for the continued financial feasibility of the Project, as solely determined by the County pursuant to Paragraph 9 of this Agreement.

4. If at any time during the term of this Agreement, the County real property taxes are less than the PILOT, the Owner shall pay the ordinary County real property taxes payable had the Property not been tax exempt. The Owner shall not be required to pay both County real property taxes and payment in lieu of taxes.

5. For *Fiscal Year 2023 (July 1, 2022 through June 30, 2023)*, the Owner's annual payment in lieu of taxes shall be equal to \$218,120. For *Fiscal Year 2024 through Fiscal Year 2062*, the annual payment in lieu of taxes shall be equal to the previous year's fiscal payment plus an annual adjustment factor of four percent (4%) per annum.

6. By July 30<sup>th</sup> of each year, the County 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 and penalties at the rate as set forth in the County Code for overdue property taxes per month shall be charged and collected by the County 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 payments required under any of the provisions of this Agreement, the County 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 County 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 for the period covered by the outstanding payments, plus all interest and penalties, if any, less any portion of such payment actually paid under this Agreement. To enforce its rights under this Paragraph, the County 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. Further, notwithstanding anything to the contrary contained herein, the County hereby agrees that any cure of any default made or tendered on behalf of the Owner by a partner of the Owner or its affiliate or a mortgagee of the Owner shall be deemed to be a cure by the Owner, and accepted or rejected on the same basis as if made or tendered by the Owner. A partner of the Owner or its affiliate or a mortgagee, in each case who has provided its address to the County, shall have a period of thirty

(30) days after receipt of notice, or such longer period of time as may set forth for the Owner herein, the right, but not the obligation, to cure a default prior to exercise of remedies by the County hereunder.

9. Beginning on July 1, 2022 and for each successive five (5) year period from that date throughout the term of this Agreement, the Owner shall submit to the County Office of Finance complete audited financial reports for the Project for the previous five (5) years and a projection of Project's income and expenses for the next five (5) year period. If based on a review of the audited financial reports and the projections for the Project, the County determines that the Project has net cash from the operation of the Project after payment of all expenses (including, but not limited to, reimbursement of all certified development and construction costs, management fees, investor servicing fees, debt service payments (including any payments from Surplus Cash required to be made by the Owner under any first priority or subordinate debt loan documents), anticipated costs to meet the physical and social needs of the Project, reasonable asset management fees to the general partner, payments of deferred developer fee, taxes owed to the State, and the payments required under this Agreement) and an eight percent (8%) return on the tax credit equity investment, calculated on a cumulative basis, then the County may modify the PILOT at that time to require the Owner to apply such net cash toward the difference between taxes otherwise payable had the Property not been exempt from ordinary County real property taxes based on the assessment for Anne Arundel County real property taxes for the Project and the payments required under this Agreement, or the County may decide that a PILOT is no longer needed and may choose to discontinue its obligations under this Agreement.

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

11. This Agreement may be assigned to a holder of a mortgage or deed of trust or its successor in the event of a foreclosure, provided that the assignee shall be subject to the terms and conditions of this Agreement.

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

TO COUNTY: Office of Finance  
Anne Arundel County, Maryland  
MS 1103  
44 Calvert Street  
Annapolis, Maryland 21401

With a copy to: Anne Arundel County  
Office of Law  
2660 Riva Road, 4<sup>th</sup> Floor  
Annapolis, Maryland 21401

TO OWNER: Fairfield Marley Station LP  
5355 Mira Sorrento Place Suite 100  
San Diego, California 92121  
Attention: Jenna Woods

With a copy to: Fairfield Marley Station LP  
5355 Mira Sorrento Place Suite 100  
San Diego, California 92121  
Attention: Mike Alcantara

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.



13. This Agreement shall inure to the parties hereto and their respective successors, assigns, and/or legal representatives, except that this Agreement shall not survive a sale or transfer of the Property or the sale or transfer of the partnership interest of the Owner in lieu of the sale of the Property (excluding transfers made to effectuate initial finance closing), unless the continued financial need for the PILOT can be demonstrated and the transfer of this agreement is approved by the County Council.

14. This Agreement shall be construed to be effective retroactive to July 1, 2022.

15. It is understood and agreed by the execution of this Agreement that the County does not waive any rights of governmental immunity which it may have in any damage suits against it, and that the County 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.

16. 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 Anne Arundel County.

IN WITNESS WHEREOF, the County has caused this Agreement to be signed in its name by the County Executive, to be attested to by the Secretary of the County Executive, and to have the County Seal affixed hereto; and the Owner has caused this Agreement to be signed in its name by its General Partner, duly attested to by its Secretary.

ATTEST:

**Fairfield Marley Station LP,**  
a Delaware limited partnership

By: FRH Marley Station LLC,  
a Delaware limited liability company,  
its General Partner

By: FRH GP LLC,  
a Delaware limited liability company,  
its Non-Member Manager

DocuSigned by:  
*Jenna Woods*  
By: \_\_\_\_\_  
1796E78DC5E440B  
Name: Jenna Woods  
Title: Senior Vice President &  
Corporate Secretary

ATTEST:

ANNE ARUNDEL COUNTY, MARYLAND

DocuSigned by:  
*Sandra Ballard*  
\_\_\_\_\_  
5753B71E8AE34E0

DocuSigned by:  
*[Signature]*  
By: \_\_\_\_\_ (Seal)  
CBC47D9EB95C44A  
Matthew J. Power  
Chief Administrative Officer

APPROVED FOR FORM AND LEGAL SUFFICIENCY  
ANNE ARUNDEL COUNTY, MARYLAND  
GREGORY J. SWAIN, COUNTY ATTORNEY

DocuSigned by:  
*Kelly Kenney*  
By: \_\_\_\_\_  
882178E97CE8542...  
Kelly Phillips Kenney  
Supervising County Attorney

9/30/2022  
\_\_\_\_\_  
Date

APPROVED:

DocuSigned by:  
*Billie Penley*  
By: \_\_\_\_\_  
991B74E9C597407...  
Controller

10/3/2022  
\_\_\_\_\_  
Date