

**REDWOOD APARTMENTS**  
**PAYMENT IN LIEU OF TAXES (PILOT) TERM SHEET**

**A. LDG'S RESPONSIBILITIES**

1. LDG agrees to construct 296 units of multifamily affordable housing reserved for individuals making 60% and 30% of the Area Median Income (AMI).
2. LDG agrees to make an annual PILOT payment of \$75,000 to the City of San Marcos, which equates to 50% of the City's estimated total ad valorem tax amount. This PILOT will start in year 1 of the project's life and continue for the entire life of the project.
3. LDG agrees that the total PILOT payment will escalate by \$1,500 annually for the life of the project.
4. LDG also agrees to include the PILOT as a condition of the Trust Indenture required by the bank to ensure the City of San Marcos receives their annual PILOT.

**B. SAN MARCOS' RESPONSIBILITIES**

1. San Marcos agrees to support LDG and their pursuit of a 100% ad valorem tax exemption. The 100% ad valorem tax exemption will be obtained through the following structure:
  - (i) LDG will assign the land to the Capital Area Housing Finance Corporation ("CAHFC").
  - (ii) LDG will form a limited partnership (the "**Partnership**") with a non-profit affiliate of CAHFC, which will own the improvements.
  - (iii) The Partnership will then enter into a 99-year ground lease with CAHFC.
  - (iv) By CAHFC taking ownership of the land and the Partnership taking ownership of the improvements, both the land and the improvements will be 100% exempt from all ad valorem taxes via a statute defined by Section 11.11 of the Texas Tax Code.
2. San Marcos agrees to issue LDG a "Resolution of No Objection", which is a requirement set forth by the Texas Department of Housing & Community Affairs (TDHCA) in order for LDG to receive the Tax Credits necessary to fund the Project.

**C. PAYMENT IN LIEU OF TAXES (PILOT)**

1. The ownership structure contemplated herein is expected to generate a 100% ad valorem tax exemption on all future improvements and a freeze on any current ad valorem taxes due in part from the land for the Project. The City agrees to support LDG in their pursuit of a 100% ad valorem tax exemption. If LDG is successful in their pursuit, LDG agrees to make a Payment In Lieu Of Taxes (a "**PILOT**") to be paid by the Partnership to the City of San Marcos based on the following calculation:

**Estimated Taxable Value:** \$24,000,000

**San Marcos Tax Rate:** 0.6139

$\$24,000,000 / 100 = \$240,000$

$\$240,000 \times 0.6139 = \$147,336$

\$147,336 rounded up to \$150,000

$\$150,000 \times 0.50 = \$75,000$

**Annual PILOT: \$75,000**

2. The first year of the PILOT is expected to commence in the tax year following the completion of construction and occupancy stabilization of the Project. For example, if construction is completed and achieves occupancy stabilization in 2021, the first PILOT will be made in 2022.

## **PAYMENT AGREEMENT**

### **(REDWOOD APARTMENTS)**

This Payment Agreement (the “**Agreement**”) dated as of February \_\_, 2020 is entered into by and between the City of San Marcos, Texas (“**City**”), and LDG Redwood, LP, a to be formed Texas limited partnership (the “**Partnership**”), upon terms and conditions set forth herein.

### **RECITALS**

WHEREAS, the Partnership intends to construct, equip and manage an affordable multifamily apartment facility in San Marcos, Hays County, Texas, to be known as Redwood Apartments and to be constructed on the property described on Exhibit A attached hereto (the “**Facility**” or the “**Property**”); and

WHEREAS, Capital Area Housing Finance Corporation (CAHFC), owner of the Property (“**Landlord**”), and the Partnership (“**Tenant**”) intend to enter into a 99-year lease to be evidenced by a Memorandum of Ground Lease for the purposes of recording notice of the lease to protect the rights and interests of Landlord and Tenant as to third parties; and

WHEREAS, the Facility will be exempt from ad valorem taxation pursuant to Section 11.11 of the Texas Tax Code (the “**Exemption**”); and

WHEREAS, the City has a public purpose for entering into this Agreement and held a meeting on February 4<sup>th</sup>, 2020, whereby the City decided that it is in the interest of the City and the public to enter into this Agreement to facilitate the development of affordable housing within the City;

WHEREAS, the Partnership desires to make annual payments to the City (each a “**Payment**”) to preserve tax revenue to the City that is lost through the Exemption; and

WHEREAS, City finds that this Agreement serves the public purpose of promoting economic growth.

NOW, THEREFORE, in consideration of the foregoing and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Partnership agrees to pay the City of San Marcos a Payment equal to \$75,000, which is equal to fifty percent (50%) of the estimated total ad valorem taxes. Such Payments shall be paid based on the following calculation:

**Estimated Taxable Value: \$24,000,000**

**San Marcos Tax Rate: 0.6139**

$\$24,000,000 / 100 = \$240,000$

$\$240,000 \times 0.6139 = \$147,336$

$\$147,336$  rounded up to \$150,000

$\$150,000 \times 0.50 = \$75,000$

**Annual Payment: \$75,000**

Subject to the terms and conditions hereof, the Partnership agrees to continue to make the Payment based upon a continuation of a \$1,500 annual increase for each subsequent year the Partnership owns the Facility and the Property receives an exemption from ad valorem taxes. If at any time the Property no longer receives an exemption from ad valorem taxes, this Agreement shall automatically terminate, and be of no further force and effect. The Payment will abide by the following payment schedule:

		YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
PAYMENT PER YEAR	\$1,500 ANNUAL INCREASE	\$75,000	\$76,500	\$78,000	\$79,500	\$81,000
CUMULATIVE PAYMENT		\$75,000	\$151,500	\$229,500	\$309,000	\$390,000

		YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
PAYMENT PER YEAR	\$1,500 ANNUAL INCREASE	\$82,500	\$84,000	\$85,500	\$87,000	\$88,500
CUMULATIVE PAYMENT		\$472,500	\$556,500	\$642,000	\$729,000	\$817,500

		YEAR 11	YEAR 12	YEAR 13	YEAR 14	YEAR 15
PAYMENT PER YEAR	\$1,500 ANNUAL INCREASE	\$90,000	\$91,500	\$93,000	\$94,500	\$96,000
CUMULATIVE PAYMENT		\$907,500	\$999,000	\$1,092,000	\$1,186,500	\$1,282,500

		YEAR 16	YEAR 17	YEAR 18	YEAR 19	YEAR 20
PAYMENT PER YEAR	\$1,500 ANNUAL INCREASE	\$97,500	\$99,000	\$100,500	\$102,000	\$103,500
CUMULATIVE PAYMENT		\$1,380,000	\$1,479,000	\$1,579,500	\$1,681,500	\$1,785,000

2. Payments are due from the Partnership to the City on or before January 31 for the previous tax year. The first Payment is due from the Partnership to the City on or before January 31 of the calendar year following the year of construction completion and occupancy stabilization. If the Partnership fails to pay the Payment to the City within such time, and such failure continues for ten days after written notice of such default to the Partnership by the City, the City shall have the right to exercise any and all legal remedies available to it to obtain such payment. The Partnership agrees to pay the statutory amounts for penalties, interest, attorney's fees, and costs of collection applicable to suits to recover delinquent ad valorem taxes under Texas Tax Code Chapter 33 for failure to remit timely Payments to the City as a contractual obligation even though the Property will be exempt from local ad valorem taxation.

3. All payments shall be made payable to City of San Marcos and shall be sent to the Director of Finance, City of San Marcos, 630 E. Hopkins St., San Marcos, Texas 78666.

4. To the extent permitted by law, a holding by any court that any part or any provision in this Agreement is invalid, illegal or unenforceable in any respect shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been a part of the Agreement.

5. This Agreement may not be amended except in a writing specifically referring to this Agreement and signed by the parties hereto. Any right created under this Agreement may not be waived, except in a writing specifically referring to this Agreement and signed by the party waiving the right. Provided, however, termination of this Agreement shall not relieve the Partnership, or its successors, from any payments due City prior to such termination.

6. If for any reason the Partnership should fail to make the Payment in accordance with Paragraph 2, the parties agree that (i) the tax that would have been paid by the Partnership pursuant to Paragraph 2 plus (ii) the amount of any interest calculated in accordance with paragraph 2; plus (iii) the City's reasonable attorney's fees and costs of collection should any action be required in order to compel payment of all such amounts shall serve as liquidated damages from the Partnership to the City. Nothing in

this Agreement shall be construed as creating a lien against the Property, nor shall the City be entitled to place on a lien on the Property for any unpaid portion of the Payment or any related expenses and payables.

7. Any notice provided or permitted to be given pursuant to this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid, certified mail, with return receipt requested, by fax (with confirmation of receipt), by personal delivery service or nationally recognized air courier service. For purposes of notice, the addresses of the parties shall be as set forth below:

Director of Finance  
City of San Marcos  
630 E. Hopkins St.  
San Marcos, Texas 78666

LDG Redwood, LP  
c/o Capital Area Housing Finance Corporation  
4101 Parkstone Heights Dr., Suite 280  
Austin, TX 78746  
Attn: Jim Shaw

8. This Agreement shall be governed by the laws of the State of Texas. Venue for any action concerning this Agreement shall be in the District Courts of Hays County, Texas.

9. The Partnership may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of City, which consent shall not be unreasonably withheld, conditioned on (i) the prior approval of the assignee or successor and a finding by City that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of the Partnership under this Agreement. Any attempted assignment without City's prior consent shall constitute grounds for termination of this Agreement and following ten (10) calendar days of receipt of written notice from City to the Partnership.

10. This Agreement constitutes the entire understanding between the parties and supersedes any prior negotiations, discussions, agreements, and understandings between the parties with respect to the subject matter of this Agreement.

11. This Agreement shall continue for a term concurrent with the Exemption of the Property. Notwithstanding anything herein to the contrary, at such time as the Property no longer receives an exemption from ad valorem taxes, this Agreement shall automatically terminate, and be of no further force and effect.

12. This Agreement may be simultaneously executed in multiple counterparts, which, taken together, shall be considered as original, and all of which constitute one and the same instrument.

Executed to be effective as of the date set forth above.

**CITY OF SAN MARCOS**

**LDG REDWOOD, LP**

(a to-be-formed Texas limited partnership)

By: LDG Redwood GP, LLC,  
a Texas limited liability company, its general  
partner

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

## EXHIBIT A

### METES & BOUNDS DESCRIPTION

BEING 15.51 ACRES OF LAND, SURVEYED BY LANDESIGN SERVICES, INC., SITUATED IN THE BARNETT 0. KANE SURVEY, ABSTRACT NO. 281 IN HAYS COUNTY, TEXAS AND BEING ALL OF A CALLED 15.512 ACRE TRACT OF LAND DESCRIBED IN A DEED TO SMITHCO REDWOOD, LLC, AS RECORDED IN DOCUMENT NO. 19023898, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch rebar with cap stamped "CA INC RPLS 2988" found, for the West comer of said 15.512 acre tract, the South comer of Lot 1, Block "A", LOT 1, BLOCK A, LA VISTA FOUNDATION SUBDIVISION, recorded in Book 8, Page 277 of the Plat Records of Hays County, Texas (P.R.H.C.T.) and the N01ih comer of a called 0.37 of one acre tract of land described in a deed to the County of Hays, recorded in Volume 2759, Page 212 of the Deed Records of Hays County, Texas (D.R.H.C.T.), also being in the existing Easterly right-of-way line of Redwood Road (R.O.W. Varies - CR 232);

THENCE, North 44°12'04" East along the common line of said 15.512 acre tract and said Lot 1, a distance of 606.38 feet to a 1/2-inch rebar with cap stamped "DAM 5348 PROP COR" found, for the North comer of said 15.512 acre tract, in the common line of said Lot 1 and of the remainder of a called 156.35 acre tract of land listed as tract number 5 (156.35 Acres described in Exhibit G, Save & Except 50.000 Acres described in Exhibit H) to Two Rivers Interests, LP, recorded in Volume 4514, Page 305 of said O.P.R.H.C.T., from which a 1/2-inch rebar with cap stamped "DAM 5348 PROP COR" found, for the East comer of said Lot 1, bears North 44°12'04" East a distance of 1583.29 feet;

THENCE, South 41°40'55" East along the N01iheast line of said 15.512 acre tract, a distance of 1,198.87 feet to a 1/2-inch rebar with cap stamped "DAM 5348 PROP COR" found for the East comer of said 15.512 acre tract;

THENCE, South 60°38'19" West along the Southeast line of said 15.512 acre tract, a distance of 626.69 feet to a 1/2-inch rebar with cap stamped "DAM 5348 PROP COR" found, for the South corner of said 15.512 acre tract, in the Southwest line of the remainder of said 156.35 acre tract and the Northeast line of said 0.37 of one acre tract, also being in said existing Easterly right-of-way line of Redwood Road, from which a 1/2-inch rebar with cap stamped "EAGLE SURVEYING" found, for the South corner of the remainder of said 156.35 acre tract, the West corner of a called 85.865 tract of land described as Tract 2 to Three Rivers Development, LLC in Document No. 18042251, of said O.P.R.H.C.T. and the East corner of said 0.37 of one acre tract, also being the said existing Easterly right-of-way line of Redwood Road, bears South 41°15'52" East a distance of 49 .40 feet;

THENCE, North  $41^{\circ}15'52''$  West along the common line of said 15.512 acre tract, said 0.37 of one acre tract, and said existing Easterly right-of-way line of Redwood Road, a distance of 1,021.64 feet to the POINT OF BEGINNING and containing 15.51 acres of land, more or less.

This project is referenced for all bearing and coordinate basis to the Texas Coordinate System, NAD83 - 2011 Adjustment, South Central Zone (4204). All distances shown hereon are surface values represented in U.S. Survey Feet based on a grid-to-surface combined adjustment factor of 1.00009759.

This property description was prepared from an on-the-ground survey performed under my supervision and is accompanied by a separate plat of even date. The field work was completed on October 24, 2019.



## **EXHIBIT A**

### **METES & BOUNDS DESCRIPTION**

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THENCE, North  $41^{\circ}15'52''$  West along the common line of said 15.512 acre tract, said 0.37 of one acre tract, and said existing Easterly right-of-way line of Redwood Road, a distance of 1,021.64 feet to the POINT OF BEGINNING and containing 15.51 acres of land, more or less.

This project is referenced for all bearing and coordinate basis to the Texas Coordinate System, North American Datum of 1983 (NAD83 - 2011 Adjustment), South Central Zone (4204). All distances shown hereon are surface values represented in U.S. Survey Feet based on a grid-to-surface combined adjustment factor of 1.00009759.

This property description was prepared from an on-the-ground survey performed under my supervision and is accompanied by a separate plat of even date. The field work was completed on October 24, 2019.

# REDWOOD - SAN MARCOS, TX

## PILOT BREAKDOWN

			YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
PILOT PER YEAR	\$1,500	ANNUAL INCREASE	\$75,000	\$76,500	\$78,000	\$79,500	\$81,000
CUMULATIVE PILOT			\$75,000	\$151,500	\$229,500	\$309,000	\$390,000
			YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
PILOT PER YEAR	\$1,500	ANNUAL INCREASE	\$82,500	\$84,000	\$85,500	\$87,000	\$88,500
CUMULATIVE PILOT			\$472,500	\$556,500	\$642,000	\$729,000	\$817,500
			YEAR 11	YEAR 12	YEAR 13	YEAR 14	YEAR 15
PILOT PER YEAR	\$1,500	ANNUAL INCREASE	\$90,000	\$91,500	\$93,000	\$94,500	\$96,000
CUMULATIVE PILOT			\$907,500	\$999,000	\$1,092,000	\$1,186,500	\$1,282,500
			YEAR 16	YEAR 17	YEAR 18	YEAR 19	YEAR 20
PILOT PER YEAR	\$1,500	ANNUAL INCREASE	\$97,500	\$99,000	\$100,500	\$102,000	\$103,500
CUMULATIVE PILOT			\$1,380,000	\$1,479,000	\$1,579,500	\$1,681,500	\$1,785,000

***What is a PILOT?***

It is a “Payment In Lieu Of Taxes”.

***What is the difference between a PILOT and actual property taxes?***

The main difference is a PILOT is essentially a donation made to the city. Since it is a donation, the PILOT is not subject to the same restrictions as tax revenue. Most importantly, it does not count against the newly imposed 3.5% cap.

***Who is responsible for making this PILOT?***

The Partnership between LDG and CAHFC.

***Where does the PILOT come from?***

The PILOT will be budgeted an operating expense for the development and will be paid directly out of the development’s annual revenue.

***Where is the PILOT paid?***

It is paid directly to the City of San Marcos.

***When is the PILOT paid?***

PILOT Payments will be paid to the City of San Marcos on or before January 31<sup>st</sup> for the previous tax year.

***Why is LDG proposing this?***

I listened to each councilmember’s comments at the most recent city council meeting and I became aware of how important and necessary tax revenue is for the City of San Marcos. Additionally, I understand the potential strain a new multifamily project could place on services (police, fire, etc), especially if that project is not paying property taxes. That being said, I made the decision to come up with a solution to defer a portion of the revenue generated by the development back to the City of San Marcos in the form of a PILOT.

***Why does LDG need an ad valorem tax exemption?***

In addition to the proposed social services and amenities, we want to include 30% AMI units in this project because there is significant demand for them in San Marcos. The issue is, 30% AMI units have much lower rents compared to 60% AMI units. Low rents result in lower project revenue overall, so that loss of revenue has to be made up by lowering the property’s operating expenses. The only expense that can realistically be lowered is property taxes.

***Why were other developers able to pay property taxes on their sites?***

Developers (including LDG) have been able to pay full property taxes on their projects in San Marcos. The difference between those projects and the one I am proposing is none of those previous projects had 30% AMI units, they were all 60% AMI and/or Market Rate. Since 60% AMI and Market Rate units command higher rents, those projects generated a higher amount of revenue and were able to cover the full cost of the property taxes. 30% AMI units command much lower rents, so our proposed Redwood project generates a much lower amount of revenue, meaning we are not able to cover the full cost of the property taxes.

For example, LDG’s Riverstone project, which has only 60% AMI units, is projected to generate approximately \$4,800,000 of gross income in year 1. Conversely, LDG’s Redwood project, which has a mixture of 60% AMI and 30% AMI units, is only projected to generate approximately \$3,800,000 of gross income in year 1. That \$1,000,000 difference in gross income on Redwood is what takes away our

ability to pay the full property tax amount. A high amount of gross income gives us the ability to pay property taxes. A low amount of gross income does not.

***Why is this beneficial to the City of San Marcos?***

This PILOT allows the City of San Marcos to recoup a portion of their tax revenue that would have otherwise been completely eliminated. Additionally, the PILOT would essentially be an annual donation to the city, meaning it wouldn't be subject to the same restrictions associated with tax revenue. Most importantly, the City of San Marcos would still be able to "cash in" on the development through the PILOT, but that money would NOT count against the [new 3.5% cap](#). This makes the money from the PILOT even more valuable.

***How much money is the City of San Marcos going to receive from the PILOT?***

The City of San Marcos will receive a PILOT of \$75,000 in year 1. This PILOT will escalate by \$1,500 annually. The City of San Marcos will receive a total of \$1,785,000 over a 20-year period. Below is a detailed breakdown:

Year 1 Cumulative PILOT	\$75,000
Year 5 Cumulative PILOT	\$390,000
Year 10 Cumulative PILOT	\$817,500
Year 15 Cumulative PILOT	\$1,282,500
Year 20 Cumulative PILOT	\$1,785,000

***How did you come up with \$75,000 as the PILOT?***

The PILOT is projected to be the equivalent of 50% of the city's total estimated tax amount and is based on the following calculation:

**Estimated Taxable Value:** \$24,000,000  
**San Marcos Tax Rate:** 0.6139  
 $\$24,000,000 / 100 = \$240,000$   
 $\$240,000 \times 0.6139 = \$147,336$   
 $\$147,336$  rounded up to \$150,000  
 $\$150,000 \times 0.50 = \$75,000$   
**Annual PILOT: \$75,000**

***How does the City of San Marcos receive the PILOT?***

We will include instructions in [Trust Indenture](#), which is a contract between the bond issuer and the bond holder, to disperse the PILOT annually to the City of San Marcos. Every year on or before January 31<sup>st</sup>, the [Bond Trustee](#) will ensure the PILOT is dispersed directly to the City of San Marcos.

***How can the City of San Marcos ensure PILOT is paid annually?***

There are two (2) things that can be done to ensure annual payment of the PILOT occurs:

1. *Execute a PILOT Agreement* – We have a draft PILOT Agreement we can provide, which notes the terms and expectations of the PILOT.
2. *Include the PILOT in the Trust Indenture* – This is part of the bond/loan documents, so the Bond Trustee, will ensure this payment is made.

***Has LDG done this before?***

We are currently working on two projects in Dallas County with a very similar structure. We have also done this on projects in Tennessee and Louisiana. Additionally, CAHFC has a long history of utilizing PILOT program and they are very well versed in incorporating this structure. CAHFC currently has two projects in San Marcos that utilize this PILOT structure, Encino Pointe and Sienna Pointe.