

County Council Of Howard County, Maryland

2012 Legislative Session

Legislative Day No. 11

Resolution No. 140 -2012

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION approving the terms and conditions of a Payment in Lieu of Taxes Agreement by and between Hickory Ridge Village LLLP, a Maryland limited liability limited partnership, and Howard County, Maryland for a multi-family rental housing project known as Hickory Ridge Place Apartments.

Introduced and read first time _____, 2012.

By order _____
Stephen LeGendre, Administrator

Read for a second time at a public hearing on _____, 2012.

By order _____
Stephen LeGendre, Administrator

This Resolution was read the third time and was Adopted___, Adopted with amendments___, Failed___, Withdrawn___, by the County Council on _____, 2012.

Certified By _____
Stephen LeGendre, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, Hickory Ridge Village LLLP (the “Partnership”) proposes to refinance and
2 operate a 108-unit multi-family rental development for low to moderate income households
3 known as “Hickory Ridge Place Apartments” and located on Hickory Ridge Road in Columbia,
4 Howard County, Maryland (the “Project”); and
5

6 **WHEREAS**, the Partnership has applied to the U.S. Department of Housing and Urban
7 Development for a HUD 223 (a) (7) loan in the approximate amount of \$4,997,900 (the “HUD
8 financing”) to refinance the existing debt on the Project; and
9

10 **WHEREAS**, pursuant to the HUD financing programs, the Project will provide housing
11 for low and moderate income households; and
12

13 **WHEREAS**, the Partnership has requested that the County permit the Partnership to
14 make payments in lieu of taxes pursuant to Section 7-505 of the Tax-Property Article of the
15 Annotated Code of Maryland; and
16

17 **WHEREAS**, the Partnership has demonstrated to the County that an agreement for
18 payments in lieu of taxes is necessary to make the Project economically feasible; and
19

20 **WHEREAS**, in order to induce the Partnership to provide affordable housing in Howard
21 County, it is in the interest of the County to accept payments in lieu of County real property
22 taxes subject to the terms and conditions of the Payment in Lieu of Taxes Agreement attached to
23 this Resolution as “Exhibit 1”.
24

25 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
26 Maryland this ____ day of _____, 2012, that:

- 27 (1) In accordance with Section 7-505 of the Tax-Property Article of the Annotated Code of
28 Maryland, the County shall accept payments in lieu of County real property taxes for the
29 Hickory Ridge Place rental housing project subject to the terms and conditions of the
30 Payment in Lieu of Taxes Agreement attached to this Resolution as “Exhibit 1”.

1 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the
2 name and on behalf of the County in substantially the form attached hereto as “Exhibit
3 1”.

4 (3) The County Executive, prior to execution and delivery of the Agreement, may make such
5 changes or modifications to the Agreement as he deems appropriate in order to
6 accomplish the purpose of the transactions authorized by this Resolution, provided that
7 such changes or modifications shall be within the scope of the transactions authorized by
8 this Resolution; and the execution of the Agreement by the County Executive shall be
9 conclusive evidence of the approval by the County Executive of all changes or
10 modifications to the Agreement, and the Agreement shall thereupon become binding
11 upon the County in accordance with its terms.

Project: Hickory Ridge Place

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2012, by and between Hickory Ridge Village LLLP, a Maryland limited liability limited partnership (the "Partnership") and **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the "County").

RECITALS

A. The Partnership proposes to refinance a 108-unit multi-family rental housing development known as "Hickory Ridge Place Apartments" (the "Project") located at 10799 Hickory Ridge Road, Columbia, Maryland, which real property is more particularly described on Exhibit "A" attached hereto (the "Property").

B. The Partnership has applied to the United States Department of Housing and Urban Development ("HUD") for a HUD 223 (a) (7) loan in the approximate amount of Four Million Nine Hundred Ninety Seven Thousand Nine Hundred Dollars (\$4,997,900) (the "HUD Loan") to refinance the existing debt of the Project. Under the HUD program, the Project will provide housing for low and moderate income persons. Also, under the government programs and this Agreement, the Project will operate on a limited distribution basis.

C. The Partnership has requested that the County permit the Partnership to make payments in lieu of County real property taxes pursuant to Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland (the "Act"). The Act provides, among other things, that real property may be exempt from County property tax if:

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

(2) the real property is used for a housing structure or project that is constructed under a federal, State, or local government program that funds construction;

(3) the structures and facilities of the real property are governmentally-controlled as to rents, charges, rates of return, and methods of operation so that the real property operates on a nonprofit or limited distribution basis; and

(4) the owner and the governing body of the county where the real property is located agree that the owner shall pay a negotiated amount in lieu of the applicable county property tax.

D. In order to induce the Partnership to provide housing for low and moderate income persons, the County agrees to accept payments in lieu of County real property taxes, subject to the terms and conditions of this Agreement.

E. The County Council of Howard County, Maryland has approved this Agreement by

resolution, a copy of which is attached hereto as Exhibit "B".

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Partnership and the County agree as follows:

1. Definitions. In this Agreement the term:

(a) "Distribution" means any withdrawal or taking of cash or any assets of the Project, excluding payment for reasonable expenses incident to the operation and maintenance of the Project. Such expenses shall include a reasonable property management fee and a reasonable guaranteed distribution to the limited partner as an investor services fee.

(b) "Gross Rental Income" means the total of all charges paid by all tenants of the Project, less the cost of all utilities paid by the Partnership.

(c) "Household of Low Income" means a household whose annual income meets the requirements of the federal Low Income Housing Tax Credit program, 26 USC 42(g)(1)(B), which requires, among other things, that the initial annual income of an eligible household is sixty percent (60%) or less of the median income as set from time to time by the United States Department of Housing and Urban Development for Section 8 Programs in the Baltimore Metropolitan Statistical Area.

(d) "Initial Closing" means the date of the initial closing of the Bond Loan.

(e) "Residual Receipts" means any cash remaining at the end of a calendar year after deducting from Surplus Cash:

(i) the Payment required by Section 5(b) of this Agreement; and

(ii) any Distributions, the aggregate of which do not exceed 10% of the Partnership's equity investment in the Project, as determined by the County.

(f) "Surplus Cash" means any cash remaining at the end of a calendar year after the payment of:

(i) the Payment required by Section 5(a) of this Agreement;

(ii) all reasonable and actual operating costs and expenses of the Project including reasonable property management fees and a reasonable guaranteed distribution to the limited partner as an investor services fee; and

(iii) all payments required under any mortgage on the Property or other loan approved by the County, including payments under the HUD Loan or other financing.

2. Acceptance of Payments. For the term of this Agreement, the Partnership shall make, and the County shall accept, annual payments in lieu of all County real property taxes due

on the Property (the "Payments"). The Property shall be exempt from County real property taxes in accordance with the Act so long as this Agreement is in effect.

3. Conditions Precedent. This Agreement shall not take effect unless and until each of the following conditions precedent have been fulfilled:

(a) Title. The Partnership shall have taken fee simple and/or leasehold title to the Property;

(b) Financing. The Partnership shall have received the HUD Loan for the refinancing of the Project; and

(c) PILOT Low Income Covenants. The Partnership shall have executed and recorded covenants on the Property, in a form acceptable to the County, that require the Partnership and all subsequent owners of the Property to offer for rent not less than one hundred (100) of the rental units in the Project to Households of Low to Moderate (60% AMI or Less) Income and shall remain so for a period of not less than thirty (30) years from the date of the HUD Loan Closing (the "Low Income Covenants").

4. Effective Date. This Agreement shall take effect when each of the conditions precedent set forth in Section 3 are fulfilled (the "Effective Date"); provided, however, that if all of the conditions precedent are not fulfilled by June 1, 2013, this Agreement shall be null and void.

5. Amount of Payments. Each Payment made under this Agreement shall be in an amount calculated as follows:

(a) Minimum Payment. The Partnership shall pay to the County an amount equal to (i) two and one-half percent (2½%) of the Project's Gross Rental Income for the preceding calendar year, less (ii) the amount of County fire tax, front-foot benefit assessment charge, ad valorem charge, and, if applicable, Middle Patuxent Drainage Area Supplemental Ad Valorem Charge (the "County Assessments") paid by the Borrower for the Project for the current taxable year.

(b) Payment from Surplus Cash. To the extent funds are available from Surplus Cash, the Partnership shall pay to the County an additional five and one-half percent (5½%) of the Project's Gross Rental Income.

(c) Payment from Residual Receipts. To the extent funds are available from Residual Receipts, and as approved by the Department of Housing and Urban Development ("HUD"), the Partnership shall pay to the County an amount which, when added to the Payments made under (a) and (b), equals (i) the County real property taxes which would have been paid for the current taxable year, if the Project were not exempt from taxation, plus (ii) the County Assessments paid by the Partnership for the Project for the current taxable year.

(d) Total Payment. Notwithstanding anything to the contrary under this Agreement, at no time shall the Payment exceed the aggregate of (i) County real property taxes which would have been paid for the current taxable year, if the Project were not exempt from taxation, plus (ii) the County Assessments paid by the Partnership for the Project for the current taxable year.

6. Time and Place Payments Due. Each Payment shall be made by May 1 of each year for the prior calendar year. Payments shall be made to the Director of Finance, 3430 Courthouse Drive, Ellicott City, Maryland 21043. Payments of the County Assessments shall be made at the time and in the manner provided by law.

7. Penalties for Late Payment. The Partnership shall be subject to the following penalties for late payments:

(a) 1% per month or part of a month during the period May 2 to June 30 following the due date; and

(b) 1 1/2% per month or part of a month on or after July 1 following the due date.

8. Penalties for Failure to Pay. At the option of the County, if any Payment is due and unpaid on or after July 1 following the due date, this Agreement may be terminated and all County real property taxes for the preceding taxable year shall be immediately due and payable.

9. Reports and Records.

(a) By no later than March 31 of each year, the Partnership shall submit to the County, in a form acceptable to the County, a report of the Project's income and expenses for the preceding calendar year, including an itemized breakdown of Gross Rental Income, Surplus Cash, and Residual Receipts.

(b) The Partnership shall submit such other reports as the County may reasonably require in order to verify the Partnership's compliance with this Agreement.

(c) The Partnership shall permit the County or any of its authorized agents to inspect the records of the Project in order to verify the Partnership's compliance with this Agreement.

10. Representations and Warranties.

(a) The Partnership represents and warrants to the County that it is eligible in all respects to enter in this Agreement to make payments in lieu of taxes under the Act.

(b) The Partnership covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

11. Term of Agreement. This Agreement shall remain in effect until the earlier to occur of:

(a) the repayment of all principal and interest due under HUD 223 (a) (7) Loan;

(

(b) the foreclosure, or the making of a deed in lieu of foreclosure, of any portion of the Property;

(c) any default under the PILOT Low Income Covenants following the receipt of notice and lapse of any applicable cure periods; or

(d) any default under this Agreement following the receipt of notice and lapse of any applicable cure periods.

12. Sale; Liens; Partnership Interests. During the term of this Agreement, the Partnership shall not, without the prior written consent of the County:

(a) sell or transfer any portion of the Property except as permitted under Section 42(i)(7) of the Internal Revenue Code;

(b) permit any liens or encumbrances against the Property except as required by the financings described in this Agreement; or

(c) Permit any general partner to sell, assign or otherwise transfer any partnership interest in the Partnership, other than the initial sale of limited partnership interests for tax credit purposes or any transfer of the limited partner's interest to an affiliate.

13. State Taxes. The Partnership acknowledges and agrees that it shall pay all State real property taxes.

14. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, all successors and assigns of the Partnership.

15. Entire Agreement. This Agreement represents the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the Partnership and the County, by their duly authorized representatives have signed this Agreement as of the date first written above.

WITNESS/ATTEST: Hickory Ridge Village LLLP, a Maryland limited liability limited partnership

By: HICKORY RIDGE DEVELOPMENT LLLP , a Maryland limited liability limited partnership, its general partner

By: SHELTER DEVELOPMENT, LLC, a Maryland limited liability company, its general partner

By: _____ (SEAL)
Name: _____
Title: _____

ATTEST: HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____
Ken Ulman
County Executive

APPROVED for Form and Legal Sufficiency: this _____ day of _____, 2012.

APPROVED by Department of Finance:

Margaret Ann Nolan
County Solicitor

Sharon F. Greisz, Director

Exhibit A: Property Description
Exhibit B: Council Resolution No. __ -2012

EXHIBIT A

LEGAL DESCRIPTION

BEING KNOWN AND DESIGNATED AS PARCEL "A" as shown on the Plat entitled, "Columbia, Village of Hickory Ridge, Section One, Area Six, Sheet 1 of 2," which plat is recorded among the Land Records of Howard County, Maryland as Plat No. 4241.

Exhibit B

County Council Of Howard County, Maryland

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