

County Council Of Howard County, Maryland

2011 Legislative Session

Legislative Day No. **11**

Resolution No. 120-2013

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 the Howard County Housing Commission and its successors and assigns and Howard County, Maryland for a multi-family rental housing development on the property to be known as Deep Falls Apartments.

Introduced and read first time _____, 2013.

By order _____
Sheila M. Tolliver, Administrator

Read for a second time at a public hearing on _____, 2013.

By order _____
Sheila M. Tolliver, Administrator

This Resolution was read the third time and was Adopted ____, Adopted with amendments ____, Failed ____, Withdrawn ____, by the County Council on _____, 2013.

Certified By _____
Sheila M. Tolliver, 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**, the Howard County Housing Commission, a public body corporate and
2 politic, (the “Commission”) is the current owner of certain real property located on Maidstone
3 Place and Deep Falls Way in Elkridge, Maryland which is currently unimproved (the
4 “Property”); and

5
6 **WHEREAS**, the Commission proposes to develop the Property by constructing and
7 operating a rental housing development comprised of approximately 60 multi-family, mixed-
8 income units to be known as Deep Falls Apartments (the “Project”); and

9
10 **WHEREAS**, the Commission has entered into a Project Development Agreement with
11 MBI Development, Company, Inc., dated September 7, 2012, for the purpose of developing the
12 Project; and

13
14 **WHEREAS**, the Commission proposes to lease the Property to a limited partnership,
15 controlled by the Commission through its ownership of the sole general partner, a to-be-formed
16 Maryland limited liability company; and

17
18 **WHEREAS**, the Commission will require that the lessee under the lease, and pursuant to
19 its limited partnership agreement, operate the Project to provide 42 residential units for low
20 income persons; and

21
22 **WHEREAS**, in order to make the Project affordable, the Commission has requested that
23 the County abate all County real property taxes pursuant to Section 7-505 of the Tax-Property
24 Article of the Annotated Code of Maryland; and

25
26 **WHEREAS**, in order to promote housing for low income persons, the County agrees to
27 abate all County real property taxes, subject to the terms and conditions of the proposed Payment
28 in Lieu of Taxes Agreement, attached to this Resolution as “Exhibit 1”.

29
30 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
31 Maryland this ____ day of _____, 2013, that:

- 1 (1) In accordance with Section 7-505 of the Tax-Property Article of the Annotated Code of
2 Maryland, the County shall abate all County real property taxes for the Project subject to
3 the terms and conditions of the Payment in Lieu of Taxes Agreement (the “Agreement”)
4 attached to this Resolution as “Exhibit 1”.
- 5 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the
6 name and on behalf of the County in substantially the form attached.
- 7 (3) The County Executive, prior to execution and delivery of the Agreement, may make such
8 changes or modifications to the Agreement as he deems appropriate in order to
9 accomplish the purpose of the transactions authorized by this Resolution, provided that
10 such changes or modifications shall be within the scope of the transactions authorized by
11 this Resolution; and the execution of the Agreement by the County Executive shall be
12 conclusive evidence of the approval by the County Executive of all changes or
13 modifications to the Agreement, and the Agreement shall thereupon become binding
14 upon the County in accordance with its terms.

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this "Agreement") is made this _ day of _____, 2013, by and between the **HOWARD COUNTY HOUSING COMMISSION**, a public body corporate and politic (the "Commission") and **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the "County").

RECITALS

A. The Commission is the fee simple owner of that unimproved parcel of real property described in the deed from Atapco HS Acquisitions, LLC dated September 10, 2012 and recorded among the Land Records of Howard County, Maryland (the "Land Records") at Liber 14283, folio 424 and located in Howard County, Maryland, as more particularly described therein (the "Property"). The Commission plans to develop the Property by constructing and operating a sixty (60) unit multi-family mixed-income housing development (the "Project"). The Commission proposes to lease the Property for the Project to a limited partnership (the "Partnership"), controlled by the Commission through its ownership of the sole general partner, a to-be-formed Maryland limited liability company. The obligations, representations, and covenants of the Commission as set forth in this Agreement shall mean and include the Partnership as the lessee of the Project.

B. The Commission has applied for financing for the Project to the Maryland Department of Housing and Community Development of the State of Maryland ("DHCD") for a Rental Housing Fund Loan in the approximate amount of Two Million Dollars (\$2,000,000) (the "RHF Loan") and to the Community Development Administration of the State of Maryland for a Low Income Housing Tax Credits (LIHTC) reservation in the approximate amount of Six Hundred Thirty Thousand Dollars (\$630,000) (the "LIHTC Reservation") to fund a portion of the construction costs of the Project. Under the State programs, the Project will provide housing for low income persons. Also, under the government programs and this Agreement, the Project will operate on a limited distribution basis.

C. The Commission has requested that the County permit the Commission 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 Commission to provide housing for low income persons, the County agrees to abate all 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 Commission and the County agree as follows:

1. Definitions. In this Agreement the term:

(a) "Household of LIHTC 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.

(b) "Initial Closing" means the date of the initial closing of the RHF Loan.

2. Abatement of County Real Property Taxes.

(a) Beginning on the date of Initial Closing and continuing for the term of this Agreement (as set forth in Section 7), all Howard County real property taxes for the Project shall be abated. Except for the County Assessments set forth in subsection (b), the Commission shall be exempt from paying the real property taxes assessed on the Project in accordance with the Act so long as this Agreement is in effect.

(b) The Commission shall pay to the County the full amount of any County fire tax, front-foot benefit assessment charge, ad valorem charge, and any other charges on the Project (the "County Assessments") as they become due on the Project.

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

(a) Lease. The Partnership shall have a leasehold interest in the Project;

(b) Financing. The Commission shall have received the RHF Loan and the LIHTC Equity for the construction of the Project; and

(c) PILOT Low Income Covenants. The Commission shall have executed and recorded covenants on the Project, in a form acceptable to the County, that require the Commission, the Partnership and all subsequent owners of the Projects to offer for rent not less than forty-two (42) of the rental units in the Project to Households of LIHTC Low Income for a period of not less than forty-two (42) years from the date of Initial Closing (the "PILOT Low Income Covenants").

4. Effective Date. This Agreement shall take effect when each of the conditions precedent set forth in

Section 2 are fulfilled (the "Effective Date"); provided, however, that if all of the conditions precedent are not fulfilled by December 31, 2014, this Agreement shall be null and void.

5. Reports and Records.

(a) By no later than March 31 of each year, the Commission 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.

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

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

6. Representations and Warranties.

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

(b) The Commission 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.

7. 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 the RHF Loan;
- (b) the foreclosure, or the making of a deed in lieu of foreclosure, of any portion of the Project;
- (c) any default under the PILOT Low Income Covenants;
- (d) forty-two (42) years from the date of Initial Closing; or
- (e) any default under this Agreement.

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

- (a) sell or transfer any portion of the Project;
- (b) permit any liens or encumbrances against the Project except as required by the financings described in this Agreement or entered into at the time of the Initial Closing; 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 in the Partnership for tax credit purposes.

9. State Taxes. The Commission acknowledges and agrees that it shall pay all state real property taxes due with respect to the Project.

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

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

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

WITNESS/ATTEST:

HOWARD COUNTY HOUSING COMMISSION

Thomas P. Carbo
Secretary

By: _____(SEAL)
Carole McPhee
Chairperson

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____
Ken Ulman
County Executive

APPROVED for Form and Legal
Sufficiency this _____ day
of _____, 2013

APPROVED by Department of Finance:

Margaret Ann Nolan
County Solicitor

Stanley J. Milesky, Director

Reviewing Attorney:

Constance A. Tucker
Senior Assistant County Solicitor

[Notaries continue on the following page.]

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2013, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **Carole McPhee**, Chairperson of the Howard County Housing Commission and she acknowledged that she executed the Payment in Lieu of Taxes Agreement for the purposes therein contained, and she further acknowledged the same to be the act of the Howard County Housing Commission.

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2013, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **Ken Ulman**, the County Executive of Howard County, Maryland, and he acknowledged that he executed the Payment in Lieu of Taxes Agreement for the purposes therein contained, and further acknowledged the same to be the act of Howard County, Maryland.

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

I CERTIFY THAT:

- (a) I am an attorney admitted to practice before the Court of Appeals of Maryland; and
- (b) I prepared the foregoing Payment in Lieu of Taxes Agreement.

Constance A. Tucker

Exhibit A: Council Resolution No. ____-2013