

County Council Of Howard County, Maryland

2014 Legislative Session

Legislative Day No. 13

Resolution No. 123-2014

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, Maryland and Riverwatch Elkridge LLLP, a limited liability limited partnership, for a multi-family rental housing development to be known as Riverwatch.

Introduced and read first time December 1, 2014.

By order

Jessica Feldmark
Jessica Feldmark, Administrator

Read for a second time at a public hearing on December 15 2014.

By order

Jessica Feldmark
Jessica Feldmark, Administrator

Tabled January 5, 2015

This Resolution was read the third time and was Adopted ☒ Adopted with amendments __, Failed __, Withdrawn __, by the County Council on February 2 2015.

Certified By

Jessica Feldmark
Jessica Feldmark, 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**, Riverwatch Elkridge, LLLP, a Maryland limited liability limited
2 partnership (the “Partnership”), has contracted to purchase certain real property located on
3 Furnace Avenue in Elkridge, Maryland (the “Property”); and
4

5 **WHEREAS**, The Partnership proposes to develop the Property by constructing and
6 operating a rental housing development comprised of approximately 84 mixed-income units to be
7 known as Riverwatch (the “Development”); and
8

9 **WHEREAS**, the Partnership has applied to the Department of Housing and Community
10 Development of the State of Maryland for tax exempt bonds in the approximate amount of
11 \$14,319,300, a Rental Housing Works loan in the approximate amount of \$1,500,000, and a
12 Partnership Rental Housing Program loan in the approximate amount of \$2,025,000, and to the
13 Community Development Administration of the State of Maryland for equity financing from
14 Low Income Housing Tax Credits in the approximate amount of \$2,558,947 to fund a portion of
15 the construction costs of the Development (collectively, the “State financing”); and
16

17 **WHEREAS**, pursuant to the State financing programs, the Development will provide
18 housing for lower income persons; and
19

20 **WHEREAS**, the Partnership has requested that the County permit the Partnership to
21 make payments in lieu of taxes pursuant to Section 7-506.1 of the Tax-Property Article of the
22 Annotated Code of Maryland; and
23

24 **WHEREAS**, the Partnership has demonstrated to the County that an agreement for
25 payments in lieu of taxes is necessary to make the Project economically feasible; and
26

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

1 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
2 Maryland this 2nd day of February, 2015, that:

3 (1) In accordance with Section 7-506.1 of the Tax-Property Article of the Annotated Code of
4 Maryland, the County shall abate all County real property taxes for the Project subject to
5 the terms and conditions of the Payment in Lieu of Taxes Agreement (the "Agreement")
6 attached to this Resolution as "Exhibit 1".

7 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the
8 name and on behalf of the County in substantially the form attached.

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

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of this _____ day of _____, 2014, by and between **RIVERWATCH ELKRIDGE, LLLP**, a limited liability limited partnership of the State of Maryland (the "Partnership") and **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the "County").

RECITALS

A. The Partnership has contracted to acquire certain real property located on Furnace Avenue in Elkridge, Maryland, which real property is more particularly described on Exhibit "A" attached hereto (the "Property"). The Partnership proposes to construct and operate on the Property an 84-unit mixed-income rental housing development to be known as "Riverwatch" (the "Development").

B. The Partnership has applied to the Department of Housing and Community Development of the State of Maryland ("DHCD") for tax exempt bonds in the approximate amount of Fourteen Million Three Hundred Nineteen Thousand Three Hundred Dollars (\$14,319,300) (the "Bond Loan"), a Rental Housing Works loan in the approximate amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the "RHW Loan"), and a Partnership Rental Housing Program ("PRHP") loan in the approximate amount of Two Million Twenty Five Thousand Dollars (\$2,025,000) (the "PHRP Loan"), and to the Community Development Administration of the State of Maryland ("CDA") for equity financing from Low Income Housing Tax Credits ("LIHTC") in the approximate amount of Two Million Five Hundred Fifty Eight Thousand Nine Hundred Forty Seven Dollars (\$2,558,947) (the "LIHTC Equity") to fund a portion of the construction costs of the Development (collectively, the "DHCD Financing"). Under the State programs, the Development will provide housing for lower income persons.

C. The Partnership has requested that the County permit the Partnership to make payments in lieu of County real property taxes pursuant to Section 7-506.1 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 or substantially rehabilitated under a federal, State, or local government program that funds construction, or insures its financing in whole or in part, or provides interest subsidy, rent subsidy or rent supplements;

(3) the owner of the real property agrees to (A) continue to maintain the real property as rental housing for lower income persons under the requirements of the governmental programs described in item (2) of this paragraph and agrees to renew any annual contributions contract or other agreement for rental subsidy or supplement or (B) enters into an agreement with the governing body

of the county 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 five years; 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 lower 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 Development, excluding payment for reasonable expenses incident to the operation and maintenance of the Development. 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 Development, 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 DHCD Financing.

(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 initial equity investment in the Development, 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 Development including reasonable property management fees, reasonable asset management fees to the managing general partner, and a reasonable guaranteed distribution to the limited member as an investor services fee; and

(iii) all payments required under any mortgage on the Property approved by the County, including payments under the DHCD 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 DHCD Financing for construction of the Development; and

(c) PILOT 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 forty two (42) of the rental units in the Development to Households of Low Income for a period of not less than forty (40) years from the date of Initial Closing (the "PILOT 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 December 31, 2015, 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) **four percent (4%)** of the Development'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 Development 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 **four percent (4%)** of the Development's Gross Rental Income.

(c) Payment from Residual Receipts. To the extent funds are available from Residual Receipts, 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 Development were not exempt from taxation, plus (ii) the County Assessments paid by the Partnership for the Development for the current taxable year.

(d) Total Payment. The intention of this Agreement is that each Payment shall at no time exceed the aggregate of (i) County real property taxes which would have been paid for the current taxable year, if the Development were not exempt from taxation, plus (ii) the County Assessments paid by the Partnership for the Development 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's Director Finance, in a form acceptable to the County, a report of the Development'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 Development 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 termination of the PILOT Covenants;

(b) the foreclosure, or the making of a deed in lieu of foreclosure, of any portion of the Property, unless the party acquiring the Property agrees to continue the PILOT Covenants under terms and conditions acceptable to the County;

(d) any default under the PILOT Covenants which is not cured within a reasonable period after notice, which period shall in all events be at least thirty (30) days; or

(e) any default under this Agreement which is not cured within a reasonable period after notice.

12. Sale; Liens; Partnership Interests. During the term of this Agreement, the Partnership shall not, without the prior written consent of the County, make any transfer, exchange, encumber or otherwise convey its interest in the Property except as permitted by the DHCD Financing documents. If the Partnership transfers the Property to a new owner (other than a holder of a mortgage or deed of trust in the event of foreclosure or deed in lieu of foreclosure), then the Partnership shall be permitted to assign this Agreement to the new owner, provided that (i) the transfer to the assignee was permitted by the DHCD Financing documents and (ii) the assignee shall be subject to the terms and conditions of this Agreement.

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.

[SIGNATURES BEGIN ON NEXT PAGE]

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:

RIVERWATCH ELKRIDGE, LLLP

By: Riverwatch Elkridge KB HCC, LLC
General Partner

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

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____ (SEAL)
Allan Kittleman
County Executive

APPROVED for Form and Legal
Sufficiency: this _____ day
of _____, 2014.

APPROVED by Department of Finance:

Margaret Ann Nolan
County Solicitor

Stanley Mileski, Director

THE HOWARD COUNTY HOUSING COMMISSION, a body corporate and politic of the State of Maryland, as owner of that portion of the Property described on Exhibit "A" attached hereto, consents and agrees to the terms and conditions of this Agreement:

ATTEST:

**HOWARD COUNTY HOUSING
COMMISSION**

Thomas P. Carbo
Secretary/Executive Director

By: _____ (SEAL)
Carole McPhee
Chairperson

APPROVED for Form and Legal Sufficiency:
this ____ day of _____, 2014.

Constance A. Tucker
Senior Assistant County Solicitor

Exhibit A: Property Description

Exhibit B: Council Resolution No. _____ - 2014

EXHIBIT A

Legal Description