

Project: Sierra Woods

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2009, by and between Sierra Woods Limited Partnership, a 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 proposes to acquire, refinance, and rehabilitate a 158-unit multi-family rental housing development known as "Sierra Woods Apartments" (the "Project") located at 8712 Airybrink Lane, Columbia, Maryland, which real property is more particularly described on Exhibit "A" attached hereto (the "Property").

B. The Partnership has applied to the Community Development Administration of the State of Maryland ("CDA") for a tax-exempt bond loan in the approximate amount of \$6,690,000 (the "Bond Loan"), and to the Department of Housing and Community Development of the State of Maryland ("DHCD") for a Maryland Housing Rehabilitation Program loan in the approximate amount of \$500,000 (the "MHRP Loan") and for a Tax Credit Assistance Program loan in the approximate amount of \$400,000 (the "TCAP Loan"), and for equity from the sale of Federal Low Income Housing Tax Credits in the approximate amount of \$2,823,392 (the "Tax Credits") and is receiving financing from the Seller of the Property as well as deferring the Partnership's developer's fee to fund a portion of the acquisition and rehabilitation costs of the Project. Under the State programs, 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 and MHRP 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 initial 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 Bond Loan, MHRP Loan, TCAP Loan or other State financing, deferred developer fee and Seller Take Back Loan.

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 Bond Loan and the MHRP Loan for the acquisition and rehabilitation 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 forty two (142) of the rental units in the Project to Households of Low Income for a period of not less than forty-one (41) 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 3 are fulfilled (the "Effective Date"); provided, however, that if all of the conditions precedent are not fulfilled by June 30, 2010, 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 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 four percent (4%) 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 the Bond Loan;
- (b) the repayment of all principal and interest due under the MHRP Loan;
- (c) the foreclosure, or the making of a deed in lieu of foreclosure, of any portion of the Property;
- (e) any default under the PILOT Low Income Covenants; or
- (e) any default under this Agreement.

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;
- (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.

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:

Sierra Woods Limited Partnership

By: EHC Sierra Woods, LLC, General Partner

By: Enterprise Housing Corporation, Managing
Member

By: _____(SEAL)

Name: _____

Title: _____

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____(SEAL)

Ken Ulman
County Executive

APPROVED for Form and Legal
Sufficiency: this _____ day
of _____, 2009.

APPROVED by Department of Finance:

Margaret Ann Nolan
County Solicitor

Sharon F. Greisz, Director

Exhibit A: Property Description

Exhibit B: Council Resolution No. ____-2009

EXHIBIT A