

RESOLUTION NO. 02-11

[PERTAINING TO AUTHORIZATION FOR THE PRESIDENT OF THE BOARD OF COUNTY COMMISSIONERS TO EXECUTE, ON BEHALF OF THE BOARD, AN AGREEMENT WITH SILVERWOOD APARTMENTS, LLC, FOR THE PAYMENT OF AN AMOUNT IN LIEU OF REGULAR REAL PROPERTY TAXES IN ORDER TO PROVIDE RENTAL HOUSING TO HOUSEHOLDS WITH LIMITED INCOMES IN CALVERT COUNTY.]

WHEREAS, the Board of County Commissioners of Calvert County, Maryland, recognizes that there is a significant need to maintain quality housing facilities in Calvert County for households of limited income; and

WHEREAS, Silverwood Apartments, LLC (the "Owner") has constructed an affordable housing project, Silverwood Farms, consisting of 180 units in the Town of Prince Frederick for the purposes of providing rental housing to households with limited income (the "Project"); and,

WHEREAS, Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland, as amended, allows for payment of a fee in lieu of real property tax for property which is maintained as rental housing for lower income persons, provided that the Board of County Commissioners enters into an agreement for the payment of a negotiated amount in lieu of the applicable county real property tax; and

WHEREAS, the Owner has demonstrated to the County that an agreement for payments in lieu of taxes is necessary to make the Project economically feasible and that the Project qualifies in all respects under the provision of said Section 7-506.1.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Calvert County, Maryland, that pursuant to said State statute, the real property on which the Project has been constructed shall be exempt from real property taxes in accordance with a written agreement to be entered into between the County and the Owner, a copy of which is attached; and,

BE IT FURTHER RESOLVED, that the President of the Board of County Commissioners is hereby authorized to execute a written agreement with the Owner in the name of and on behalf of the Board in substantially the form attached hereto.

DONE, this 15th day of March 2011, by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

Attest:

Board of County Commissioners of Calvert County, Maryland

Corrine J. Cook
Corrine J. Cook, Clerk

Susan Shaw
Susan Shaw, President

Patrick Nutter
Patrick Nutter, Vice-President

Gerald W. Clark
Gerald W. Clark

Evan K. Slaughenhaupt
Evan K. Slaughenhaupt, Jr.

Steven R. Weems
Steven R. Weems

Approved for Legal Sufficiency on March 14, 2011
By: Emanuel Demedis
Emanuel Demedis
County Attorney

Received for Record March 17, 2011
at 2:45 o'clock P. M. Same day
recorded in Liber KPS No. 36
Page 95 COUNTY COMMISSIONERS
MEETINGS AND RESOLUTION.

John P. Smith

**AGREEMENT
FOR
PAYMENT IN LIEU OF TAXES
(Account #02-063727)**

THIS AGREEMENT, made this _____ day of _____, 2011, by and between the **Board of County Commissioners of Calvert County, Maryland**, a body corporate and politic (hereinafter referred to as the "County"), and **Silverwood Apartments, LLC**, a Maryland limited liability company (hereinafter referred to as the "Owner").

WHEREAS, the Owner intends to rehabilitate an affordable housing project consisting of 180 units, existing on a parcel described on attached Exhibit A, within the Town Center of Prince Frederick, Maryland, for the purposes of providing rental housing to persons with low or moderate incomes (the "Project"); and

WHEREAS, the Project will be financed, in part, by a loan from the Maryland Department of Housing and Community Development (the "Department") in an amount of up to \$553,447.00 pursuant to the terms of a Letter of Commitment from the Department dated June 25, 2010 (the "Commitment Letter").

WHEREAS, Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland, as amended, provides, among other things, that real property may be exempt from county property tax if (i) the real property is owned by a person engaged in constructing or operating housing structures or projects; (ii) 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, or provides interest subsidy, rent subsidy or rent supplements; (iii) the owner agrees to continue to maintain the real property as rental housing for certain persons enumerated under the requirements of the government programs and agrees to renew any annual contributions contract or other agreement for rental subsidy or supplement; and (iv) the owner thereof enters into an agreement with the governing body of the county where the real property is located for the payment of a negotiated sum or sums in lieu of the applicable county property tax; and

WHEREAS, the Owner hereby warrants that it intends to operate the Project as rental housing for persons with low or moderate incomes and limit rents pursuant to certain agreements between the Owner and the U.S. Department of Housing and Urban Development and the Maryland Department of Housing and Community Development and Federal and State mortgage loan documents (the "Regulatory Agreements") and that the Project will qualify in all respects under the provisions of said Section 7-506.1 supra; and

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

WHEREAS, pursuant to Resolution No. _____ adopted _____, the Board of County Commissioners of Calvert County, Maryland, approved the terms and conditions for payments in lieu of taxes for the Project, and authorized the President of the Board of County Commissioners to enter into such an agreement; and

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, in consideration of the mutual covenants, terms and conditions hereof and pursuant to the power and authority of said Section 7-506.1 supra, the County and Owner agree as follows:

1. Upon substantial completion of the Project, the Project shall be exempted from ordinary County real property taxes and instead the Owner shall pay a fee in lieu of taxes, as provided herein. The payments to be made by the Owner to the County with respect to the Project, as described hereafter, shall be in lieu of all ordinary County taxes on real property due and payable beginning the fiscal year following substantial completion of the improvements. Such payments shall be made by the Owner and shall be accepted by the County for a term of ten fiscal years. Until the commencement of the payment of fees in lieu of taxes, the Owner shall pay all taxes levied against the property.

2. The Project shall be deemed substantially completed when Owner submits to the County copies of the certificates of use and occupancy for every unit in the Project and AIA Form G-704 (Architect's Certificate of Substantial Completion), as required by subsections 3.2(a) (ii) and (iii) of Exhibit A, Standard Terms and Conditions, made a part of the Commitment Letter.

3. This Agreement shall be in effect only as long as: (a) the Project shall be owned and used for the provision of rental housing and related facilities to certain enumerated households at limited rents, pursuant to the Regulatory Agreements; and (b) the Project shall in all other respects comply with the conditions of Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland, the Regulatory Agreements and this Agreement.

4. The Owner's annual payment in lieu of taxes shall be equal to an amount that is \$9,000 (Nine Thousand Dollars) less than the amount of real property taxes that would normally be due to the County, in the absence of this Agreement, with respect to the real property which is used for the operation of the Project, as described in Exhibit A. In the event this calculation results in a negative number, no payment shall be due to the

County for that year but no credit shall accrue in favor of the Owner for any other or future taxes due.

5. The payment provided for herein shall be in lieu of ordinary county real estate taxes. Nothing in this Agreement shall be deemed to excuse the Owner from the payment of other fees and charges against the Project, including but not limited to, State real property taxes, water and sewer connection and usages fees and solid waste disposal fees

6. The County Treasurer shall bill the Owner annually by July 30th of each year for payment due for the fiscal year in which billed under the terms of this Agreement.

7. Payments required hereunder and based upon bills which are rendered as provided in this Agreement for the fiscal years for which such tax payments apply will be considered delinquent on October 1 of the fiscal year in which billed, or thirty (30) days after the bill is delivered, whichever shall last occur. Interest at the rate of one (1) percent per month shall be due, charged and collected on the full amount of any delinquent bill.

8. If the Owner is in default for one hundred and eighty (180) days for any payments required under any of the provisions of this Agreement, the County may, at its option, declare a default by providing written notice of such default to the Owner and to the holders of all mortgages or deeds of trust, if the name and addresses of same are provided as required in Paragraph 11 of this Agreement. If within thirty (30) days of such notice, the payments have not been brought current, then the County may, at its option, declare all amounts due as follows: a sum equal to the total real property taxes which would have been due from the Owner in absence of this Agreement, plus all interest and penalty allowed by law for unpaid taxes, if any, less all amounts actually paid under this Agreement. In order to enforce its rights under this Paragraph, the County may renegotiate this Agreement, foreclose or seek any other remedy available at law or in equity. Payments due under this Paragraph shall be considered a lien against the Property having the same priority among lien holders as the property tax which these payments replace. If a default is declared, operation of this Agreement is rescinded for all fiscal years for which the payments due hereunder are not paid in full, and the normal real property taxes due for all such years will be imposed, secured and collected in the manner provided by the Tax-Property Article.

9. The Owner shall not make any transfer or exchange of the Property which would change its use as a residential rental property.

10. This Agreement may be assigned to a holder of a mortgage or deed of trust in the event of a foreclosure under said mortgage or deed of trust, provided that the assignee shall be subject to the terms and conditions of the Agreement.

11. (a) For the purposes of this Agreement, all notices and bills shall be hand-delivered or mailed by postage prepaid first class mail or certified mail, return receipt requested. Notices and bills shall be given to the parties as follows:

TO COUNTY: Director of Finance and Budget
Courthouse
175 Main Street
Prince Frederick, MD 20678

TO OWNER: Silverwood Apartments, LLC
7850 Walker Drive, Suite 400
Greenbelt, MD 20770-3240
Attn: Richard L. Mostyn

(b) Each notice or bill that is sent by one party to the other party at the listed address shall be presumed to have been received and delivered three (3) days after the date of mailing, except when prior written notice is given by one party to the other that a party or an address has changed.

(c) Owner shall provide the County as soon as practicable the name, address and account number and name of supervising officer, if applicable, of any holder of a mortgage or a deed of trust on the property subject to this Agreement for purposes of providing the notice required by Section 6 of this Agreement.

12. Owner shall maintain and/or improve the Project in accordance with the following:

(a) The Project will be professionally managed and maintained in compliance with the Regulatory Agreements.

(b) Each lease executed by the Owner and a tenant shall permit the Owner to terminate the lease if there has been unlawful use of drugs at the Project or any unlawful or offensive use in or about the unit by the tenant or the tenant's family, friends, guests, invitees or licensees, as permitted by law.

13. This Agreement shall inure to the benefit of the parties hereto and their respective successors, assigns, and/or legal representatives.

14. It is understood and agreed by the execution of this Agreement that the County does not waive any rights of governmental immunity which it may have in any damage suits against it, and that the County reserves the right to plead governmental immunity in such suit in law or in equity or such pleading as is appropriate notwithstanding the execution of this Agreement.

15. This Agreement shall be governed by the law of Maryland and any action between the parties hereto shall be brought in and vest jurisdiction and venue solely in a court of competent jurisdiction in Calvert County.

IN WITNESS HEREOF, the County has caused this Agreement to be signed in its name on the date first written above by the President of the Board of County Commissioners attested to by the Clerk to the Board of County Commissioners, and the Owner has caused this Agreement to be signed in its name by its Managing Member duly attested to by its Secretary.

Witness/Attest:

SILVERWOOD APARTMENTS, LLC,
a Maryland limited liability company

By: BA Silverwood, LLC,
a Maryland limited liability company,
its Managing Member

By: Bozzuto Holdings, LLC,
a Maryland limited liability
company, its Managing Member

By: _____
Richard L. Mostyn,
Vice Chairman

Board of County Commissioners of Calvert
County, Maryland

Clerk

By: _____
Susan Shaw, President

Approved as to form and legal
sufficiency on _____, 2011