

FINAL

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2014, Legislative Day No. 34

Bill No. 57-14

Introduced by Mr. Grasso, Chairman
(by request of the County Executive)

By the County Council, July 21, 2014

Introduced and first read on July 21, 2014
Public Hearing set for and held on September 15, 2014
Bill Expires October 24, 2014

By Order: Elizabeth E. Jones, Administrative Officer

A BILL ENTITLED

1 AN ORDINANCE concerning: Payment in Lieu of Taxes – Berger Square, Odenton,
2 Maryland

3
4 FOR the purpose of approving exemptions from County real property taxes for a certain
5 property located in Odenton, Anne Arundel County; authorizing the County
6 Executive to enter into a certain agreement for payment of a negotiated amount in lieu
7 of County real property taxes; and providing for the time and terms under which the
8 tax exemptions will take effect.

9
10 WHEREAS, the County Council recognizes there is a significant need for quality
11 multifamily housing communities in Anne Arundel County for households of
12 limited income; and

13
14 WHEREAS, exemptions from County real property taxes for certain properties
15 that provide rental housing for persons with limited incomes is authorized by the
16 Tax-Property Article, § 7-506.1, of the State Code, provided that the County and
17 the property owner enter into an agreement for the payment of a negotiated
18 amount in lieu of the County real property tax; now, therefore,

19
20 SECTION 1. *Be it enacted by the County Council of Anne Arundel County,*
21 *Maryland,* That, in accordance with the Tax-Property Article, § 7-506.1, of the State
22 Code, there is an exemption from County real property taxes for the 48 unit apartment
23 complex to be known as Berger Square, located at 1474, 1476, 1480, and 1484 Berger
24 Street, Odenton, Maryland, Tax Account Numbers 04-000-05891200, 04-000-00363155,
25 04-000-00363150, and 04-000-00302400 (the "Property").
26

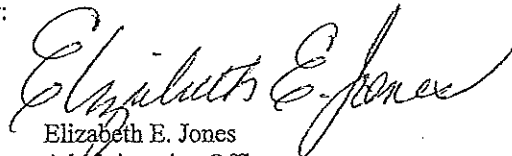
1 SECTION 2. *And be it further enacted*, That the County Executive is hereby
2 authorized to enter into an agreement with Homes for Odenton Limited Partnership, as
3 the owner of the Property, for a payment in lieu of real property taxes for the Property, a
4 copy of the Agreement being appended to this Ordinance as Exhibit A and incorporated
5 by reference as if fully set forth in this Ordinance.

6
7 SECTION 3. *And be it further enacted*, That these exemptions may not take effect
8 until the requirements of the Tax-Property Article, § 7-506.1(a), of the State Code, are
9 met, and shall take effect in accordance with the terms of the Agreement.

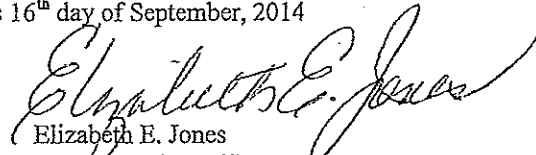
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11 SECTION 4. *And be it further enacted*, That this Ordinance shall take effect 45 days
12 from the date it becomes law.

READ AND PASSED this 15th day of September, 2014

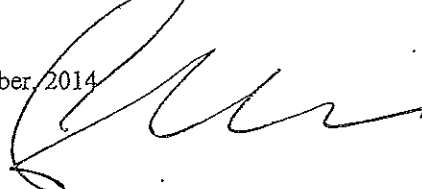
By Order:


Elizabeth E. Jones
Administrative Officer

PRESENTED to the County Executive for her approval this 16th day of September, 2014

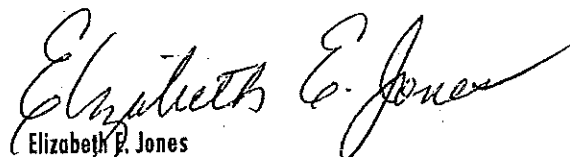

Elizabeth E. Jones
Administrative Officer

APPROVED AND ENACTED this 24th day of September, 2014


Laura Neuman
County Executive

EFFECTIVE DATE: November 8, 2014

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF BILL NO.
57-14, THE ORIGINAL OF WHICH IS RETAINED IN THE FILES
OF THE COUNTY COUNCIL.


Elizabeth E. Jones
Administrative Officer

**AGREEMENT BETWEEN
HOMES FOR ODENTON, LIMITED PARTNERSHIP AND ANNE
ARUNDEL COUNTY, MARYLAND**

THIS AGREEMENT, Made this _____ day of _____, 2014, by and between Anne Arundel County, Maryland, a body corporate and politic (hereinafter referred to as the "County"), and Homes for Odenton Limited Partnership, a limited partnership formed in the State of Maryland (hereinafter referred to as the "Owner").

WHEREAS, the Owner has acquired real property and proposes to develop 48 units of rental housing located at 1474, 1476, 1480, and 1484 Berger Street in Odenton, Maryland, and currently identified under Tax Account Numbers 04-000-05891200, 04-000-00363155, 04-000-00363150, and 04-000-00302400 (the "Property"), for the purposes of providing rental housing to low income households (the "Project"); and

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 in the County may be exempt from County property tax if:

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

(b) 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:

(1) funds construction, or insures its financing in whole or in part, or

(2) provides interest subsidy, rent subsidy or rent supplements; and

(c) the Owner :

(1) agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the government programs and to renew any annual contributions contract or other agreement for rental subsidy or supplement; or

(2) enters into an agreement with the County to allow the 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 (5) years; and

(d) the Owner enters into an agreement with the County for the payment of a negotiated sum in lieu of applicable County property taxes on the Property; and

WHEREAS, the Owner plans to operate the Project as rental housing for low income households and intends to comply with Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland; and

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

WHEREAS, pursuant to Anne Arundel County Council Bill No. XXXX, adopted September XX, 2014, the County Council of Anne Arundel County, Maryland, approved the terms and conditions for payments in lieu of taxes for the Project, and authorized the County Executive to enter into this Agreement.

NOW, THEREFORE, THIS AGREEMENT, WITNESSETH: In consideration of the mutual covenants, terms, and agreements hereof and pursuant to the power and authority of Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland, it is agreed as follows:

1. The Owner agrees: (1) that it will operate the Project as rental housing for low income households and will limit rents pursuant to the Extended Low Income Housing Covenant for Low Income Housing Tax Credits between the Owner and the Maryland Department of Housing and Community Development (herein the "Extended Use Covenant"); (2) that, with Payment in Lieu of Taxes (PILOT), it will make 48 units available to households having incomes of no more than 60 percent of the area median income; and (3) that the Project qualifies and will continue to qualify in all respects under the provisions of said Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland.

2. Beginning *July 1, 2016*, the Property shall be exempt from ordinary County property

taxes. The payments to be made hereunder by the Owner to the County with respect to the Project shall be in lieu of all ordinary County taxes on real property under the Tax Property Article of the Annotated Code of Maryland. The payments to be made hereunder by the Owner to the County shall be made by the Owner first and accepted by the County through the Fiscal Year 2056.

3. This Agreement shall be in effect through *Fiscal Year 2056, ending June 30, 2056*, or until one of the following occurs: (a) the Project is not owned or used for the provision of rental housing and related facilities to low income households at limited rents, pursuant to the Extended Use Covenant; (b) the Project does not comply with Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland, as amended; or (c) the payment in lieu of taxes is not necessary for the continued financial feasibility of the Project, as solely determined by the County pursuant to Paragraph 9 of this Agreement.

4. If at any time during the term of this Agreement, except for Fiscal Year 2017 (July 1, 2016, through June 30, 2016), the County real property taxes for any fiscal year are less than the PILOT, as calculated hereunder, the Owner shall pay the ordinary County real property taxes payable had the Property not been tax exempt. Owner shall not be required to pay both County real property taxes and payments in lieu of taxes.

5. For the *Fiscal Year 2017 (July 1, 2016 through June 30, 2017)*, the Owner's annual payment in lieu of taxes shall be equal to \$7,200. For *Fiscal Year 2018 through Fiscal Year 2056*, the annual payment in lieu of taxes shall be equal to the previous year's fiscal payment plus an annual adjustment factor of *four percent (4%) per annum*.

6. By July 30th of each year, the County shall bill the Owner for the payment which is due by September 30th of that year, as set forth in this Agreement.

7. Payments due hereunder will be considered delinquent thirty (30) days after the due date of the bill sent to the Owner. Interest at the rate of one percent (1%) per month shall be

charged and collected by the County on all amounts remaining unpaid thirty (30) days after the due date.

8. If the Owner is in default for one hundred 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 the default to the Owner and to the holders of all mortgages or deeds of trust. 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 the absence of this Agreement, plus all interest, if any, less all amounts actually paid under this Agreement. 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. Notwithstanding anything to the contrary which is or might be contained in this Agreement, payments due under this Paragraph shall be considered a first lien against the Property and superior to any other liens placed upon the Property.

9. From July 1, 2016, and for each successive five (5) year period from that date throughout the term of this Agreement, the Owner shall submit to the County Office of Finance complete audited financial reports for the Project for the previous five (5) years and a projection of Project's income and expenses for the next five (5) year period. If based on a review of the audited financial reports and the projections for the Project, the County determines that the Project may have net cash from the operation of the Project after payment of all expenses (including, but not limited to, reimbursement of all certified development and construction costs, management fees, investor servicing fees, debt service and anticipated costs to meet the physical and social needs of the Project) and an eight percent (8%) return on the tax credit equity investment, calculated on a cumulative basis, then the County may modify the PILOT at that time to require the Owner to apply such net cash toward the taxes otherwise payable had the

Property not been exempt from ordinary County real property taxes based on the assessment for Anne Arundel County's real property taxes for the Project, or the County may decide that a PILOT is no longer needed and may choose to discontinue its obligations under this Agreement.

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

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

12. For the purposes of this Agreement, all notices shall be hand-delivered or mailed by first class mail or certified mail, return receipt requested. Notices shall be given to the parties as follows:

TO COUNTY: Office of Finance
Anne Arundel County, Maryland
MS 1103
44 Calvert Street
Annapolis, Maryland 21401

With a copy to: Anne Arundel County
Office of Law
2660 Riva Road, 4th Floor
Annapolis, Maryland 21401

TO OWNER: Homes for Odenton, Limited Partnership
318 Sixth Street, Suite 2
Annapolis, MD 21401

With a copy to: Foundation Development Group, LLC
15 School Street
Annapolis, MD 21401

With a copy to: Chesapeake Neighbors, LLC
931 Spa Road
Annapolis, MD 21401

Each notice that is sent by one party to the other party at the listed address shall be presumed to

have been received 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. Notwithstanding any provision to the contrary contained in this Agreement, any person or party not listed in this paragraph shall not be entitled to notice as may be required by this Agreement, unless one party notifies the other party that additional notice shall also be sent to such person or party.

13. This Agreement shall inure to 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 Maryland law and any actions between the parties hereto shall be brought in and vest jurisdiction and venue solely in the Circuit Court for Anne Arundel County.

IN WITNESS WHEREOF, the County has caused this Agreement to be signed in its name by the County Executive, to be attested to by the Secretary of the County Executive, and to have the County Seal affixed hereto; and the Owner has caused this Agreement to be signed in its name by its Managing Member, duly attested to by its Secretary.

ATTEST:

HOMES FOR ODENTON, LP

By: _____ (Seal)

Diane Clyde
Vice President of Development

ATTEST:

ANNE ARUNDEL COUNTY, MARYLAND

_____ By: _____ (Seal)
Karen L. Cook
Chief Administrative Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Office of Law Date

APPROVED:

Controller Date

