

FINAL

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2021, Legislative Day No. 13

Bill No. 58-21

Introduced by Ms. Lacey, Chair
(by request of the County Executive)

By the County Council, June 7, 2021

Introduced and first read on June 7, 2021
Public Hearing set for and held on July 6, 2021
Bill Expires September 10, 2021

By Order: Laura Corby, Administrative Officer

A BILL ENTITLED

1 AN ORDINANCE concerning: Payment in Lieu of Taxes – Park View at Furnace Branch,
2 Glen Burnie, Maryland

3
4 FOR the purpose of approving exemptions from County real property taxes for a certain
5 property located in Glen Burnie, Anne Arundel County; authorizing the County
6 Executive to enter into a certain agreement for an exemption and a payment of a
7 negotiated amount in lieu of County real property taxes; and providing for the time and
8 terms under which the 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 that
15 provide rental housing for persons with limited incomes is authorized by § 7-506.1
16 of the Tax-Property Article of the State Code, provided the County and the property
17 owner enter into an agreement for the payment of a negotiated amount in lieu of
18 the County real property tax; now, therefore,

19
20 SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*
21 That, in accordance with § 7-506.1 of the Tax-Property Article of the State Code, there is
22 an exemption from County real property taxes for the real property known as Park View at
23 Furnace Branch, which is located at 7466 Furnace Branch Road, Glen Burnie, Maryland
24 21061, Tax Account Number 05-000-12079007 (the “Property”).

25
26 SECTION 2. *And be it further enacted,* That the County Executive is hereby authorized
27 to enter into the payment in lieu of taxes (“PILOT”) Agreement between Anne Arundel
28 County and RF Furnace Branch, LLC, the owner of the Property, for a payment in lieu of

1 real property taxes for the Property, as more fully described in the PILOT Agreement, a
2 copy of the PILOT Agreement between Anne Arundel County and RF Furnace Branch,
3 LLC being attached to this Ordinance as Exhibit A and incorporated by reference as if fully
4 set forth in this Ordinance.

5

6 SECTION 3. *And be it further enacted*, That these exemptions and payment in lieu of
7 taxes may not take effect until the requirements of § 7-506.1 of the Tax-Property Article
8 of the State Code are met, and shall take effect in accordance with the terms of the PILOT
9 Agreement between Anne Arundel County and RF Furnace Branch, LLC.

10

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 6th day of July, 2021

By Order:



Laura Corby
Administrative Officer

PRESENTED to the County Executive for his approval this 7th day of July, 2021



Laura Corby
Administrative Officer

APPROVED AND ENACTED this 7th day of July, 2021



Steuart Pittman
County Executive

EFFECTIVE DATE: August 21, 2021

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF
BILL NO. 58-21. THE ORIGINAL OF WHICH IS RETAINED IN THE
FILES OF THE COUNTY COUNCIL.



Laura Corby
Administrative Officer

**AGREEMENT BETWEEN
RF FURNACE BRANCH, LLC
AND ANNE ARUNDEL COUNTY, MARYLAND**

THIS AGREEMENT, Made this _____ day of _____, 2021, by and between Anne Arundel County, Maryland, a body corporate and politic (hereinafter referred to as the “County”), and RF Furnace Branch, LLC, a limited liability corporation formed in the State of Maryland (hereinafter referred to as the “Owner”).

WHEREAS, the Owner is the owner of 101 units of rental housing, located at 7466 Furnace Branch Road, Glen Burnie, Maryland and currently identified under the Tax Account Numbers 05-000-12079007 (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:

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

(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:

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

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

(iii) the owner and the governing body of the county enter into an agreement for the payment of a negotiated sum in lieu of applicable County property taxes on the Property; and

(iv) 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

WHEREAS, the Owner will 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. ____-21, adopted _____, 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: (a) that it will operate the Project as rental housing for low income households and will limit rents pursuant to the Low Income Housing Tax Credit Covenant between the Owner and the Community Development Administration, a unit of the Division of Development Finance of the Maryland Department of Housing and Community Development (herein the "Extended Use Covenant"); (b) that, with Payment in Lieu of Taxes ("PILOT"), it will make thirty-four (34) units available to households having incomes of no more than 60 percent of the area median income; forty-eight (48) units available to households having incomes of no more than 50 percent of the area median income; fourteen (14) units available to households having incomes of no more than 40 percent of the area median income; five (5) units available to households having incomes of no more than 30 percent of the area median income; and (c) 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 *in Fiscal Year 2022 (July 1, 2021)*, 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 Fiscal Year 2061.

3. This Agreement shall be in effect through *Fiscal Year 2061, ending June 30, 2061*, 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, the County real property taxes are less than the PILOT, the Owner shall pay the ordinary County real property taxes payable had the Property not been tax exempt. The Owner shall not be required to pay both County real property taxes and payment in lieu of taxes.

5. For *Fiscal Year 2022 (July 1, 2021, through June 30, 2022)*, the Owner's annual payment in lieu of taxes shall be equal to **\$25,250**. For *Fiscal Year 2023 through Fiscal Year 2061*, 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 and penalties at the rate as set forth in the County Code for overdue property taxes 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 for the period covered by the outstanding payments, plus all interest and penalties, if any, less any portion of such payment 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. Further, notwithstanding anything to the contrary contained herein, the County hereby agrees that any cure of any default made or tendered on behalf of the Owner by a partner of the Owner or its affiliate or a mortgagee of the Owner shall be deemed to be a cure by the Owner, and accepted or rejected on the same basis as if made or tendered by the Owner. A partner of the Owner or its affiliate or a mortgagee, in each case who has provided its address to the County, shall have a period of thirty (30) days after receipt of notice, or such longer period of time as may set forth for the Owner herein, the right, but not the obligation, to cure a default prior to exercise of remedies by the County hereunder.

9. Beginning on July 1, 2022 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 has 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 payments (including any payments from Surplus Cash required to be made by the Owner under any first priority or subordinate debt loan documents), anticipated costs to meet the physical and social needs of the Project, reasonable asset management fees to the general partner, payments of deferred developer fee, taxes owed to the State, and the payments required under this Agreement) and a seven percent (7%) 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 difference between taxes otherwise payable had the Property not been exempt from ordinary County real property taxes based on the assessment for Anne Arundel County real property taxes for the Project and the payments required under this Agreement, 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 or its successor in the event of a foreclosure, 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: RF Furnace Branch, LLC.
875 Hollins Street, Suite 202
Baltimore, MD 21201
Attention: Asset Management

With a copy to: Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, MD 21201
Attention: Kevin Davidson

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, except that this Agreement shall not survive a sale or transfer of the Property or the sale or transfer of the partnership interest of the Owner in lieu of the sale of the Property unless the continued financial need for the PILOT can be demonstrated and the sale or transfer is approved by the County Council, provided that this Section 13 shall not apply to (i) a removal and replacement of Owner's Manager following default by the Owner's

Manager and expiration of any applicable grace and/or cure periods, all pursuant to the terms of Section 9.02 of Owner's Operating Agreement, (ii) the exercise of the buyout or purchase option by Enterprise Community Development, Inc. ("Enterprise") or an affiliate pursuant to Section 14.01 or 14.02 of the Owner's Operating Agreement so long as Enterprise owns and/or controls, directly or indirectly, the new purchasing entity and continues to utilize the Property for affordable housing or (iii) any transfer by the Limited Partner of its interest in Owner's sole Member as permitted pursuant to such Member's Amended and Restated Agreement of Limited Partnership, so long as Enterprise continues to own and/or control, directly or indirectly, such interest in Owner's sole Member.

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 General Partner, duly attested to by its Secretary.

ATTEST:

RF FURNACE BRANCH, LLC
a Maryland limited liability company

By: EHI PV 2021 Portfolio GP, LLC
a Maryland limited liability company,
its non-member manager

By: Enterprise Community Development, Inc.
(formerly known as Enterprise Homes, Inc.)
a Maryland non-stock corporation,
its sole member

Christine Madigan (Seal)
Executive Vice President & Chief Business Officer

ATTEST: ANNE ARUNDEL COUNTY, MARYLAND

By: _____ (Seal)
Matthew J. Power
Chief Administrative Officer

APPROVED FOR FORM AND LEGAL SUFFICIENCY
ANNE ARUNDEL COUNTY, MARYLAND
GREGORY J. SWAIN, COUNTY ATTORNEY

By: _____
Name: _____ Date _____
Title: _____

APPROVED:

By: _____
Controller _____ Date _____