

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND****1996 Legislative Session**Resolution No. CR-16-1996Proposed by Chairman Del Giudice (by request - County Executive)Introduced by Council Members Maloney and Del Giudice

Co-Sponsors

Date of Introduction April 16, 1996**RESOLUTION**

A RESOLUTION concerning

**Park View II Apartments Project**

For the purpose of approving the financing of a second phase of the Park View at Snow Hill Elderly Housing Project located in Laurel, Maryland ("Park View I"), to be known as Park View II (the "Project") by the State of Maryland Department of Housing and Community Development (the "Department") and the Prince George's County Home Investment Partnership Fund ("Home") and approving the terms and conditions of a Payment in lieu of Taxes Agreement by and between Park View II Limited Partnership (the "Partnership") and Prince George's County.

WHEREAS, there is a significant need for quality housing units in Prince George's county for the elderly with limited income; and

WHEREAS, the Housing Authority of Prince George's County (the "Authority") and the Partnership developed Park View I, an existing elderly rental housing project of 153 units located on property owned by the Housing Authority known as 9000 Briarcroft Lane (the "Park View Site"); and

WHEREAS, the Partnership and the Authority propose to construct a second phase of the project containing approximately 105 apartment units for low to moderate income elderly residents, on a portion of the Park View Site (the "Property"); and

WHEREAS, the Department has received an application package from the Partnership for financing in an amount of Six Hundred Thousand Dollars (\$600,000) pursuant to its authority under Section 2-201 et seq. of Article 83B of the Annotated Code of Maryland and

the Department of Housing and Community Development of Prince George's County has received an application for Three Hundred Fifty Thousand (\$350,000) in Home Investment Partnership funds (HOME); and

WHEREAS, 100% of the Project will provide housing for low to moderate income elderly residents; and

WHEREAS, the Partnership and the Authority have requested that the County Council authorize the Partnership and the Authority to make payments in lieu of County real property taxes pursuant to Section 1-305(a) (12) of Article 44A of the Annotated Code of Maryland and Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland; and

WHEREAS, Article 44A, Section 1-305(a) (12) of the Annotated Code of Maryland provides that any Maryland public body may agree with a county housing authority for a payment in lieu of taxes with respect to property owned by the authority; and

WHEREAS, Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland provides, among other things, that real property may be exempt from County property taxes if:

- (1) The real property is owned 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, or insures its financing;
- (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; and

WHEREAS, the Partnership and the Authority have demonstrated to the County that an agreement for payments in lieu of property taxes is necessary to make the Project

economically feasible; and

WHEREAS, it is beneficial to the Project and to the County residents residing at the Project and it is in the interest of the County to enter into a payments in lieu of County real property taxes agreement (the "Agreement") attached hereto and made a part hereof; and

WHEREAS, the regulations of the Department require that all projects financed by them be approved by the governing body of the locality in which a project is situated; and

WHEREAS, the County Executive has recommended support of the development of Park View II.

NOW, THEREFORE, BE IT RESOLVED by the County Council of Prince George's County, Maryland,

SECTION 1. That the construction of Park View II upon the site proposed is hereby approved subject to all applicable requirements of the Zoning Ordinance and other local requirements to assure decent, safe and sanitary housing for County residents and that the financing of Park View II proposed by the Community Development Administration in the amount of Six Hundred Thousand Dollars (\$600,000) and by the Prince George's County Home Investment Partnership Fund in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) is hereby approved.

SECTION 2. That in accordance with the Section 1-305(a) (12) of Article 44A of the Annotated Code of Maryland and Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland, the County shall enter into the Agreement for payments in lieu of County real property taxes for the Property attached hereto.

SECTION 3. That the County Executive, or designee of the County Executive, is hereby authorized to execute and deliver the Agreement in the name and on behalf of the County in substantially the form attached hereto.

SECTION 4. That the County Executive, prior to execution and delivery of the Agreement, may make such changes or modifications of the Agreement as deemed appropriate by the County Executive in order to accomplish the purpose of the transactions authorized by this Resolution; and the execution of the Agreement by the County Executive, or designee of the County Executive, shall be conclusive as evidence of the approval of the

County Executive of all changes or modifications to the Agreement; and the Agreement shall thereupon become binding upon the County in accordance with its terms.

SECTION 5. That the County Executive, or designee of the County Executive, is hereby authorized to execute and deliver an amendment to the existing PILOT Agreement for Park View I, releasing the Property (which will be subject to the Agreement attached hereto relating to the Project) from the existing PILOT Agreement for Park View I and the entire Park View Site.

SECTION 6. That copies of this Resolution be sent to the Secretary of Housing and Community Development, State of Maryland.

Adopted this 7th day of May, 1996.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY:

Ronald V. Russell  
Acting Chairman

ATTEST:

Joyce T. Sweeney  
Clerk of the Council

AGREEMENT BETWEEN  
PARK VIEW II LIMITED PARTNERSHIP  
AND  
PRINCE GEORGE'S COUNTY, MARYLAND

THIS AGREEMENT, Made this                      day of                      , 1995, and between PARK VIEW II LIMITED PARTNERSHIP, a Limited partnership of the State of Maryland (the "Owner"), the Housing Authority of Prince George's County (the "Authority") and PRINCE GEORGE'S COUNTY, MARYLAND, a political subdivision of the State of Maryland (the "County").

WHEREAS, the Owner is a Maryland limited partnership which has or will ground lease from the Authority a parcel of land located in Laurel, Prince George's County more particularly described on Exhibit A attached hereto and by reference made a part hereof (the leasehold estate being hereinafter referred to as the "Property") for the purpose of constructing thereon an apartment project containing approximately 105 apartment units and related facilities (the "Improvements") to provide housing primarily for low to moderate income elderly residents (the Property and the Improvements being collectively referred to as the "Project"); and

WHEREAS, the Owner will operate the Project for rental housing on a limited

distribution basis pursuant to a regulatory agreement between the Owner and the Department of Housing and Community Development of the State of Maryland or other governmental authority (the "Regulatory Agreement") executed in connection with the financing of the Project; and

WHEREAS, Article 44A, Section 1-305(a) (12) of the Annotated Code of Maryland (1991 Replacement Volume, as amended), provides that any Maryland public body may authorize a payment in lieu of taxes with respect to property owned by the authority; and

WHEREAS, Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland (1994 Replacement Volume, as amended), provides, among other things, that real property outside of Baltimore City 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 (which may include nondwelling commercial and community facilities, community rooms, dining halls, and infirmaries to serve its occupants and the surrounding neighborhood); and (ii) 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, or insures its financing, or provides interest subsidy, rent subsidy or rent supplements, and is substantially completed after July 1, 1978; and (iii) the structures and facilities on the real property are governmentally controlled as to rents, charges, rates of return and methods of operation so as to operate on a nonprofit or limited distribution basis; and (iv) the owners thereof enter 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 local taxes on said real property; and

WHEREAS, the Project will begin construction on or after the above date, and,

therefore, be substantially completed after July 1, 1978; and

WHEREAS, the Owner and the Authority hereby represent that the Project will qualify in all respects, under the provisions of said Sections 1-305(a) (12) and 7-505, supra, for such an agreement for negotiated payments in lieu of ordinary Prince George's County real estate taxes upon the Project; and

WHEREAS, pursuant to Resolution No. \_\_\_\_\_ adopted on the County Council of Prince George's County, Maryland, approved an agreement for payments in lieu of taxes for the Project, and authorized the County Executive to enter into such an agreement; and

WHEREAS, the County agrees to enter into an agreement for payment of a negotiated sum or sums in lieu of Prince George's County real property taxes (the "Agreement), provided that the Owner conducts its operations in accordance with the criteria and controls set forth in said Sections 1-305(a) (12) and 7-505, supra; and

WHEREAS, the Owner, the Authority and the County, pursuant to the power and authority of said Sections 1-305(a) (12) and 7-505, supra, have agreed upon a formula to determine the sum payable by the Owner to the County in lieu of Prince George's County real property taxes upon the Project.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

In consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of said Sections 1-305(a) (12) and 7-505, supra, it is agreed as follows:

(1) This Agreement shall become effective as of the date of the initial closing of the State Mortgage, as hereinafter defined, (the "Effective Date") and shall remain effective until

the Termination Date (as defined in paragraph 3 below). The payments to be made by the Owner to the County, provided for herein with respect to the Project (as defined above), shall be in lieu of Prince George's County real property taxes under the Tax-Property Article of the Annotated Code of Maryland (1994 Replacement Volume, as amended, and the Prince George's County Code, as amended). Such payments shall be made by the Owner on behalf of itself and the Authority and shall be accepted by the County only as long as (i) the Project shall be owned and used for the provision of rental housing and related facilities (including parking facilities) on a limited distribution basis, pursuant to the Regulatory Agreement; (ii) the Owner shall in all other respects comply with the conditions of Sections 1-305(a) (12) of Article 44A and 7-505 of the Tax-Property Article of the Annotated Code of Maryland, pursuant to which the County is authorized to enter into an Agreement for the payment of negotiated sums in lieu of taxes, and shall comply with all of its obligations under this Agreement; and (iii) the Owner shall provide to the County, or its authorized representatives, the financial information required by paragraph (6) hereof in order to insure full and complete compliance with the terms hereof.

(2) The intention of this Agreement is that the Owner's payment in lieu of taxes shall at no time exceed the amount of County real property tax otherwise payable based on the assessment for Prince George's County real property taxes on the improvements. This agreement shall not waive the payment of County sanitation taxes, County solid waste service charges, or other taxes assessed by entities or jurisdictions other than the County and its agencies, including but not limited to State of Maryland taxes, municipal taxes, the Washington Suburban Sanitary Commission, WSTC and the Maryland-National Capitol Park



and Planning Commission.

(3) Upon execution of this Agreement for the payment of the negotiated sums provided in paragraph four (4) hereof, the Property and, when constructed, the Improvements located in Prince George's County, Maryland, shall be exempt from Prince George's County real property taxes for the period beginning upon the Effective Date and ending on the earlier of the date on which the Project ceases to be subject to the Regulatory Agreement or the date on which there is a change in the use of the Project by the Owner without prior written approval of Prince George's county (the "Termination Date").

(4) (a) For the period from the Effective Date through the first December 31st following the date of Substantial Completion, as hereinafter defined, no County property tax shall be due or payable with respect to the Project; provided, however, if Substantial Completion occurs in the first six months of a calendar year, the Owner shall make the payments provided for in paragraph 4 (b) for such calendar year, prorated based on the number of days between Substantial Completion and the end of the calendar year.

"Substantial Completion" shall be the date upon which certificates of use and occupancy shall have been issued for the Project.

(b) For the period from the first January 1st following Substantial Completion and continuing until the Termination Date, the Owner, on behalf of itself and the Authority shall make annual payments for each calendar year (on December 31st) equal to the Minimum Annual Payment (as hereinafter defined); to the extent there is any net cash flow from the operation of the Project after payment of all expenses of operation (including payment of management fees permitted under the Regulatory Agreement, investor servicing fees, debt

service on the First Mortgage and Required Reserves), the Owner, on behalf of itself and the Authority shall apply such net cash flow toward additional payments up to the Maximum Annual Payment (as hereinafter defined). The additional payments required to be paid from net cash flow under this subparagraph (4) (b) shall be due and payable on March 31st following the end of the calendar year for which such additional payments are due.

"First Mortgage" shall mean the loan or loans provided to the Owner from Crestar Bank or other lender for a portion of its Project financing which is secured by a first mortgage(s) or deed(s) of trust on the Property (including any loan refinancing such loan). "State Mortgage" shall mean the loan provided to the Owner from the Department of Housing and Community Development of the State of Maryland. "County Mortgage" shall mean the loan provided to the Owner from Prince George's County, Maryland. (The aforesaid mortgages are hereinafter collectively referred to as the "Superior Mortgages".) "Required Reserves" shall mean any replacement reserve, operating reserve or similar reserve required under the terms of any loan document relating to the Project financing. The "Minimum Annual Payment" shall be \$100 per completed apartment unit per year and the "Maximum Annual Payment" shall be \$250 per completed apartment unit per year. The Minimum Annual Payment and the Maximum Annual Payment shall each be increased two percent (2%) per year after the first full calendar year following Substantial Completion.

(c) On the Termination Date, or sooner if such Project is refinanced in such a way that it is no longer restricted by government regulation relating to rents, charges, rates of return, and methods of operation, the Owner of such Project shall make one additional payment equal to the aggregate real property taxes which would have been due on account of

the assessed value of the Improvements during its ownership of such Project for the period after the January 1st following Substantial Completion, less all amounts actually paid under this Agreement, to the extent of available net proceeds of a sale or such refinancing after payment of all third party Project obligations including the First Mortgage but prior to the payment of any amounts owed pursuant to the State Mortgage. The County will deliver a bill to the Owner setting forth the amount due and the date payment is due, and the County will begin assessing normal penalty fees if the Owner fails to make the payment within 30 days from the due date specified in the bill. The payments required under subparagraph (4) (b) above shall not be affected by the making of one or more payments under this subparagraph (4) (c) as a result of any refinancing which does not terminate this Agreement and shall continue in effect for so long as this Agreement remains in effect.

(5) All payments under this Agreement shall be subject to the same interest rate, collection, and tax sale provisions of the Prince George's County Code as for the collection of County property taxes, except as otherwise expressly set forth in this Agreement.

(a) If the Owner has not paid any amount due under this Agreement within one hundred and eighty (180) days after such payment is due, the County may, at its option, declare a default by providing notice of any impending Tax Sale (or other written notice of such default) to the Owner, the Authority and to the holders of all mortgages or deeds of trust. If within thirty (30) days of such notice, the Owner has not paid a sum equal to the total real property taxes which would have been due from the Owner on account of the assessed value of the Improvements in the absence of this Agreement, plus all interest, if any, which shall have been charged pursuant to Paragraph 5, less all amounts actually paid under this

Agreement, the County may renegotiate this Agreement, foreclose or seek any other remedy available at law or in equity (including proceeding to Tax Sale). Payments due under this Paragraph shall be considered a lien against the Property subordinate to the lien of the First Mortgage.

(6) Within ninety (90) days after the date of Substantial Completion and after each December 31st thereafter the Owner shall submit to the Prince George's County Office of Finance and Department of Housing and Community Development a complete audited operating financial report, in such detail as may be required by the Prince George's County Office of Finance to administer this Agreement. Said financial statement shall be based on an examination of the books and records, prepared in accordance with generally accepted accounting principles, and shall be certified and audited by a Certified Public Accountant registered to practice in the State of Maryland or with the registration authority of any other State. If the Owner has not submitted said financial statement within the time specified above, the County may, at its option, declare a default by giving notice as provided in Paragraph 6 (a) and (if the Owner has failed to cure such default within 30 days from receipt of such notice) pursue remedies, all as set forth in Paragraph 6 (a) of this Agreement.

(7) The Owner shall not be entitled to any cash distribution except as permitted in accordance with the Regulatory Agreement.

(8) The Owner shall not make any transfer or exchange of the Property which would change its use as a residential rental project except as permitted by the Regulatory Agreement.

(9) Any document or agreement referenced hereinabove, or amendments thereto, shall be provided, with appropriate recording reference, by the Owner when executed and shall be

attached to this Agreement by a subsequent addendum identifying such documents and agreements for purposes of this Agreement.

(10) This Agreement may not be assigned without the County's prior written consent.

IN WITNESS WHEREOF, PARK VIEW II LIMITED PARTNERSHIP, a Maryland limited partnership has caused this Agreement to be signed in its name by its General Partner, Park View II Development Limited Partnership, and PRINCE GEORGE'S COUNTY has caused its name to be signed by the County Executive, or his designee representative, and its corporate seal to be affixed, duly attested on this Agreement, on the day and year first hereinabove written.

ATTEST:

PARK VIEW II LIMITED PARTNERSHIP

By: Park View II Development Limited  
Partnership, General Partner

By: Shelter Development Holdings, Inc.  
General Partner

Name:

Title:

ATTEST:

HOUSING AUTHORITY OF  
PRINCE GEORGE'S COUNTY

By: Michael A. Doaks  
Executive Secretary

ATTEST:

PRINCE GEORGE'S COUNTY, MARYLAND

By: Linda W. Botts  
Deputy Chief Administrative Officer

By:  
Name: Linda W. Botts

REVIEWED AS TO FORM AND LEGAL SUFFICIENCY  
AND READY FOR SIGNATURE

Deputy County Attorney

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, before me, the  
Subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore  
aforesaid, personally appeared \_\_\_\_\_, who acknowledged that (s)he  
is the \_\_\_\_\_ of Shelter Development Holdings, Inc., a General Partner of  
Park View II Development Limited Partnership, a Maryland limited partnership which is the  
General Partner of Park View II Limited Partnership, a Maryland limited partnership and  
stated that as an officer being authorized to do so, (s)he executed the foregoing instrument for  
the purpose herein contained.

AS WITNESS my hand and Notarial Seal.

Notary Public  
My Commission Expires:

I HEREBY CERTIFY that on this                      day of                      , before me, the Subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid, personally appeared Michael A. Doaks, Executive Secretary for the Housing Authority of Prince George's County, who acknowledged that he executed the foregoing Agreement on behalf of Prince George's County, Maryland and he made oath in due form of law that he is duly authorized to execute this document on behalf of the Housing Authority.

AS WITNESS my hand and Notarial Seal.

Notary Public  
My Commission Expires:

I HEREBY CERTIFY that on this                      day of                      , before me, the Subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid, personally appeared on behalf of Linda W. Botts, Deputy Chief Administrative Officer and she acknowledged that she is authorized to sign on behalf of the County Executive of Prince George's County, Maryland and is authorized to enter into this agreement.

AS WITNESS my hand and Notarial Seal.

Notary Public  
My Commission Expires: