

NEGOTIATED PAYMENTS IN LIEU OF TAXES (PILOT) AGREEMENT
BETWEEN
SP HOLLY LP
AND
PRINCE GEORGE’S COUNTY, MARYLAND

THIS NEGOTIATED PAYMENTS IN LIEU OF TAXES (PILOT) AGREEMENT (this “Agreement”) is made this ____day of _____, 2016, by and between SP HOLLY LP, a Maryland limited partnership (“Owner”), and PRINCE GEORGE’S COUNTY, MARYLAND, a body corporate and politic (“County”).

WHEREAS, the Owner owns that certain parcel of land located at 5521 Marlboro Pike in Forestville, Maryland 20747, being known and designated as Parcel A in the subdivision known as “Marlboro Oak Crest Apartments,” as per plat thereof recorded in Plat Book WWW 54 at Plat 76, among the Land Records of Prince George’s County, Maryland, as more particularly described in Exhibit A that is attached hereto and herein incorporated by reference (the “Property”) and proposes to rehabilitate two hundred twenty-four (224) multifamily residential apartment units and related facilities located on the Property, two hundred two (202) of which units will be dedicated to providing housing for low to moderate income residents and twenty-two (22) of which units are anticipated to be market rate units (collectively referred to as the “Improvements”) (the Property and the Improvements being collectively referred to as the “Project” herein); and

WHEREAS, the acquisition of the Property and the rehabilitation of the Project will be financed in part through a mortgage loan from a private lending institution (“First Loan”), the investment of investor member equity provided in connection with low-income housing tax credits (“LIHTC”) awarded by the Community Development Administration (“CDA”), an agency in the Division of Development Finance of the Department of Housing and Community Development of the State of Maryland, and a loan by CDA under its Rental Housing Works program (“RHW Loan” and together with the First Loan, collectively, the “Loans”); and

WHEREAS, the Owner will operate the Project for rental housing on a limited distribution basis pursuant to certain regulatory agreements and restrictive covenant agreements and declarations between the Owner and certain parties in connection with the Owner’s financing of the Project, including (i) one or more regulatory agreements between the Owner and CDA, as the same may be amended and/or restated from time to time (collectively, the “State Regulatory Agreement”) and (ii) a Low Income Housing Tax Credit Covenant between the Owner and the CDA, as the same may be amended and/or restated from time to time (“LIHTC Covenant”) (the State Regulatory Agreement and the LIHTC Covenant are hereafter collectively referred to as the “Regulatory Agreements”); and

WHEREAS, Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (2012 Replacement Volume, as amended) (“Section 7-506.1”), provides, among other things, that real property outside of Baltimore City may be exempt from county property tax and

municipal corporation tax if: (a)(2)(i) the real property is owned by a person engaged in constructing or operating housing structures or projects (which may include non-dwelling commercial and community facilities, community rooms, dining halls, and infirmaries to serve its occupants and the surrounding neighborhood, which are herein collectively referred to as "Service Facilities"); and (a)(2)(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 (a)(2)(ii)(1) funds construction, or insures its financing in whole or in part, or (a)(2)(ii)(2) provides interest subsidy, rent subsidy or rent supplements; and (a)(2)(iii) the owner thereof enters into an agreement with the governing body of the county and, where applicable, the municipal corporation where the real property is located, wherein such parties agree that the owner shall pay a negotiated amount in lieu of the applicable county or municipal corporation tax; and (a)(2)(iv) the owner of the real property (a)(2)(iv)(1)(A) agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the governmental programs described in (a)(2)(ii) of this paragraph and (a)(2)(iv)(1)(B) agrees to renew any annual contributions contract or other agreement for rental subsidy or supplement, OR (a)(2)(iv)(2) enters into an agreement with the governing body of the county or municipal corporation to allow the entire 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 thirty (30) years; and

WHEREAS, the Owner hereby represents that, as of the date hereof, pursuant to the Owner's borrowing of the RHW Loan and execution and delivery of the Regulatory Agreements, the Project qualifies under the provisions of said Section 7-506.1, supra, for an agreement for negotiated payments in lieu of the payment of Prince George's County taxes for the Project; and

WHEREAS, pursuant to Resolution No. CR-_____, adopted on _____, the County Council of Prince George's County, Maryland, approved an agreement for negotiated payments in lieu of taxes ("PILOT") for the Property and the Project and authorized the County to enter into this Agreement; and

WHEREAS, the County agrees to enter into an agreement for negotiated PILOT for real property taxes ("Agreement") provided that the Owner conducts and operates the Property and Project in accordance with the criteria and controls set forth in said Section 7-506.1, supra, and as governed by all applicable local, state and federal laws; and

WHEREAS, pursuant to Section 7-506.1, supra, the Prince George's County Department of Housing and Community Development ("DHCD") analyzed and determined the amount payable by the Owner to the County in lieu of the payment of Prince George's County real property taxes for the Property and 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 Section 7-506.1, supra, it is agreed as follows:

1. This Agreement shall become effective on the date of the Execution of this Agreement (“Effective Date”) and the obligation to pay negotiated payments in lieu of taxes shall commence as of 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 the payment of Prince George’s County taxes on real property under the Tax-Property Article of the Annotated Code of Maryland (2007 Replacement Volume, as amended). Such payments shall be made by the Owner in accordance with paragraphs (3) and (4) hereof 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 Service Facilities, including parking facilities, on a limited distribution basis, pursuant to the Regulatory Agreements; (ii) the Owner shall in all other respects comply with the conditions of Section 7-506.1, which authorizes the County to enter into this Agreement, and shall comply with all of its obligations under this Agreement.

2. The intention of this Agreement is that the payments in lieu of taxes shall at no time exceed the amount of taxes otherwise payable based on the annual assessment for Prince George’s County real property taxes. The Owner and the County expressly agree and understand that any taxes, fees and or fines assessed by other agencies such as the State of Maryland, Park and Planning, Washington Suburban Transit Commission, and solid waste charges and applicable fees for Bay Restoration and Clean Water (collectively referred to as “Other Real Estate Taxes and Fees”) are not subject to provisions of this Agreement. The Owner shall, therefore, pay all Other Real Estate Taxes and Fees in accordance with the applicable assessment and payment requirements.

3. Beginning with the first full tax year from the Effective Date, the Project shall be exempt from Prince George’s County real property taxes for period of thirty (30) years, ending on the earlier of thirty (30) years from the Effective Date, or upon an occurrence of any of the events set forth in paragraph (4)(e) below (“Termination Date”). The intent of this Agreement being that the Owner shall receive the benefit of the PILOT commencing for a full thirty (30) tax years from the first full tax year following the Effective Date.

4. (a) For the period from the Effective Date and continuing until the Termination Date, the Owner shall make annual payments to the County for each tax year in the amount of Fifty-Eight Thousand Three Hundred Eighty-Eight Dollars (\$58,388). The payment amount described in this clause (4)(a) shall be increased by two percent (2%) per year after the first full calendar year following the Effective Date. Each annual payment shall be paid by September 30th of each tax year.

(b) Beginning on the Termination Date, the Project shall no longer be exempt from County real property taxes and the Owner shall commence paying the regular County real property tax for the Project.

(c) The difference between the Project amounts paid under (4)(a) above and the amounts which would otherwise have been due prior to the Termination Date, but which are being deferred under the terms of this Agreement is referred to as the “Deferred Amount.” Unless the County grants prior written consent, the Deferred Amount shall be due and payable

on the refinance, sale, transfer or conveyance of the Property if the Project ceases to be used in whole or in part for the purpose set forth in this Agreement or if this Agreement is terminated prior to the Termination Date.

(d) If the Property is transferred or conveyed due to a foreclosure or a deed in lieu of foreclosure, the Project shall no longer be exempt from the County real property taxes and as applicable, all real property taxes shall be due and immediately payable to the County.

(e) This Agreement shall terminate upon the occurrence of any of the events set forth in (e)(i) through (e)(iv) below, and upon termination all payments then due under this Agreement, including the Deferred Amount, shall be paid to the County within sixty (60) calendar days thereof.

(i) The Property shall cease to be owned by the Owner or any successor to Owner or an event of default, as defined within the Regulatory Agreements, has been declared by the benefactor of the Regulatory Agreements and remains uncured by the Owner or its successor within sixty (60) days;

(ii) The Owner, the Property or the Project shall cease to comply with the conditions of Section 7-506.1;

(iii) The Owner shall fail to make any payment hereby required as and when due, which failure continues for ten (10) business days following Owner's receipt from the County of notice of such payment failure; or

(iv) The Owner shall elect to terminate this Agreement by providing written notice to the Company.

(f) The Limited Liability Company Operating Agreement of the Owner and the Regulatory Agreements shall be submitted by the Owner to the County's Director of Finance and the County's Director of the Department of Housing and Community Development, at the addresses shown below, within five (5) business days after execution.

(g) Within five (5) days following execution and delivery of the Regulatory Agreement, the Owner shall pay an administrative fee to the County in the amount of Thirty-Seven Thousand Five Hundred Dollars (\$37,500) to be deposited into the Housing Trust Fund established by the County. The Owner will remit this fee to the Director of the County's Department of Housing and Community Development to be properly processed with the County's Office of Finance.

5. For each Fiscal Year and subject to the provisions of Section 4, Net Cash Flow and/or Net Capital Proceeds of the Project actually received by the general partner of the Owner shall be shared seventy-five percent (75%) to the general partner of the Owner, as applicable, and twenty-five percent (25%) to the Housing Trust Fund established by the County. The Owner's obligation to pay any amount of Net Cash Flow and/or Net Capital Proceeds to the County's Housing Trust Fund (the "County Profit Sharing") (a) shall terminate upon the

termination or expiration of the Agreement, and (b) shall be capped on an annual basis in the event that the County has received an amount of County Profit Sharing for such year equal to the lesser of the difference between (i) the aggregate amount of the ordinary County portion of real taxes that are exempted by Section 3 hereof, and (ii) the aggregate amount paid by the Developer pursuant to Section 4. Owner shall remit County Profit Sharing payments, together with a reasonably detailed explanation of the calculation of the amount of such payment to the Director of the County's Department of Housing and Community Development on or before April 30th of each year to be properly processed with the County's Office of Finance.

(a) By March 31st of each tax year, the Owner shall submit to the County's Director of Finance and the County's Director of the Department of Housing and Community Development audited financial statements, in such detail as may be required by the Director of Finance to administer this Agreement. Said financial statements 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.

(b) Documents submitted to the County and notices provided hereunder should be addressed as follows:

Director
Office of Finance
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, MD 20772

Director
Department of Housing and Community Development
9200 Basil Court, Suite 500
Largo, MD 20774

6. (a) All taxes (as applicable) shall be due and payable by September 30th of each year. 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.

(b) If the Owner has not paid the 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 such default to the Owner and to the holders of all mortgages or deeds of trust. If within ten (10) business days of such notice, any payments that are owed have not been brought current by the Owner or any of the Project lenders, then the County may declare all taxes, which shall include the Deferred Amount, due as follows: the amount equal to the total Prince George's County 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 this Agreement, less all amounts actually paid under this Agreement. In order to enforce its rights under this

Paragraph after the Owner has failed to bring its payments current within thirty (30) days of Owner receiving notice of its default, 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 Loans. The County's delay and or failure to provide notice within the time and manner stated herein shall not limit or otherwise be deemed a waiver of its rights and remedies in law and equity.

7. This Agreement shall be an obligation running with the Property and may be recorded in the land records of the County.

8. 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.

9. The recitals set forth above are herein incorporated as operative provisions.

10. No partnership or joint venture is created by this Agreement.

11. This agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws and courts of the County and the State of Maryland.

IN WITNESS WHEREOF, SP HOLLY LP, a Maryland limited partnership, has caused this Agreement to be signed in its name by its member, and PRINCE GEORGE'S COUNTY, MARYLAND has caused its name to be signed by the County Executive, or his designee representative, duly attested on this Agreement, on the day and year first hereinabove written.

SP HOLLY LP
a Maryland limited partnership

By: Holly Partner, LLC,
a Maryland limited liability company
General Partner

By: NHP Foundation Urban Atlantic Fund I, LLC,
a Delaware limited liability company,
Sole Member

By: NHPF-UA, LLC,
a Delaware limited liability company,
Managing Member

By: UA-NHPF Fund Member, LLC,
a Maryland limited liability company,
Authorized Member

By: Urban Atlantic Development, LLC
a Delaware limited liability company,
Manager

WITNESS

By: _____
Lois S. Fried
Managing Member

PRINCE GEORGE'S COUNTY, MARYLAND

WITNESS

By: _____
Thomas M. Himler
Deputy Chief Administrative Office for
Budget, Finance, Economic Development and
Administration

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this ___ day of _____, 20__ before me a Notary Public of said State of Maryland the undersigned officer, personally appeared _____, the _____ of Urban Atlantic Development, LLC, the managing member of UA-NHPF Fund Member, LLC, the authorized member of NHPF/UA, LLC, the managing member or NHP Foundation – Urban Atlantic Fund I LLC, the sole member of Holly Partner, LLC, the general partner of SP Holly, LP, and stated that as an officer being authorized to do so, has executed the foregoing instrument for the purposes herein contained.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires:

STATE OF MARYLAND, COUNTY OF PRINCE GEORGE’S, TO WIT:

I HEREBY CERTIFY that on this ___ day of _____, 20__, before me, the Subscriber, a Notary Public of said State of Maryland, in and for Prince George’s County aforesaid, personally appeared Thomas M. Himler, Deputy Chief Administrative Officer for Budget, Finance, Economic Development and Administration of Prince George’s County, and he acknowledged the foregoing Agreement to be the corporate act and deed of the Deputy Chief Administrative Officer for Budget, Finance, Economic Development and Administration on behalf of Prince George’s County, Maryland.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires:

ATTORNEY CERTIFICATION:

I hereby certify that the foregoing Agreement for Holly Spring Meadows was prepared by or under the supervision of the undersigned _____, an attorney admitted to practice before the Court of Appeals of Maryland.

By: _____

SCHEDULE 1

DEFINITIONS

“Capital Transaction” means the sales refinancing or other disposition of the Project.

“Gross Operating Revenue” means all revenues and income of any kind received by the Owner from the operation of the Project, including all rents and other revenues from tenants, but excluding all proceeds of a sale or refinancing and all condemnation awards.

“Net Capital Proceeds” means the net cash from any Capital Transaction, less any portion thereof used to pay debts and liabilities of the Owner or to establish reserves.

“Net Cash Flow” shall be on a pre-tax basis and means, for the period in question, the amount, if any by which Gross Operating Revenue exceeds Operating Expenses.

“Operating Expenses” shall mean cash expenditures incurred in the operation, maintenance and repair of the Project including (i) cleaning, janitorial, maintenance, repair and utility expenses paid by the Owner; (ii) salaries and benefits on on-site personnel; (iii) maintenance of an office, telephone, computers or other communication devices on-site; (v) collection or legal fees related to the Owner’s interest in the Project; (vi) accounting expenses; (vii) advertising and marketing of the Project; (viii) “Minor Capital Expenditures” (i.e., items not exceeding \$5,000 in single or bulk purchase); (ix) insurance premiums; (x) brokerage fees or commissions to the extent that they are not capitalized according to GAAP; (xi) license or permit fees; (xii) real estate taxes, PILOT payment or other taxes except for income taxes; (xiii) all debt service payments relating to the Project; (xiv) any annual reserve payments or contributions; (xv) all payments in the nature of common expenses, and (xvi) commercially reasonable property management and asset management fees whether paid to third parties or related entities.

EXHIBIT A

Legal Description

BEING KNOWN AND DESIGNATED as Parcel A in the subdivision known as “Marlboro Oak Crest Apartments”, as per plat thereof recorded in Plat Book WWW 54 at Plat 76, among the Land Records of Prince George’s County, Maryland. The property is in the Sixth Election District. The premises are known as Holly Spring Meadows Apartments, Capitol Heights, Maryland.

1. South 29° 00' 45" West, 674.11 feet; thence
2. South 02° 28' 15" East, 141.25 feet; thence
3. North 63° 57' 20" West, 455.97 feet; thence
4. North 02° 17' 00" West, 505.21 feet; thence
5. North 42° 05' 20" East, 202.74 feet; thence
6. North 51° 06' 10" East, 363.54 feet; thence
7. North 10° 53' 08" East, 0.02 feet; thence
8. South 43° 13' 08" East, 484.56 feet to the POINT OF BEGINNING containing 489,191 S.F. OR 11.2303 AC.