

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**1997 Legislative Session**Resolution No. CR-46-1997Proposed by The Chairman (by request - County Executive)Introduced by Council Member Maloney

Co-Sponsors

Date of Introduction July 8, 1997**RESOLUTION**

A RESOLUTION concerning

Selborne House

For the purpose of expressing the County Council's approval of the financing for Selborne House, an elderly housing project located in Laurel, Maryland (the "Project"), by the State of Maryland Department of Housing and Community Development (the "Department") and approving the terms and conditions of a Payment in Lieu of Taxes Agreement by and between Prince George's County, Maryland and ODC Selborne House Limited Partnership, a Maryland limited partnership (the "Owner"), of which ODC Selborne House, Inc. is the managing general partner.

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

WHEREAS, the Owner proposes to construct an elderly rental housing project consisting of 126 units located on a site currently known as 429-437 Main Street, within the City of Laurel, Maryland (the "Property"); and

WHEREAS, the Department has received an application package from the Owner for tax exempt financing for the Project in an amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) as bond financing pursuant to its authority under Article 83B, Sections 2-201 through 2-208 of the Annotated Code of Maryland as amended; and

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

WHEREAS, the Owner has requested that the County Council authorize the Owner to

make payments in lieu of County real property taxes pursuant to Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland as amended; and

WHEREAS, Section 7-506.1 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 in whole or in part;
- (3) 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
- (4) The owner of the real property enters into an agreement with the governing body of the County 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 5 years; and

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

WHEREAS, in order to induce the Owner to provide housing for moderate income elderly residents it is in the interest of the County to enter into a payment 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 the Department be approved by the governing body of the locality in which a project is situated; and

WHEREAS, the County Executive endorses and recommends approval of the financing for the Project as more fully described in Attachment A, attached hereto and made a part hereof.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED by the County Council of Prince George's County, Maryland, that the financing of Selborne House proposed by the Department in an amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) is hereby approved.

SECTION 2. BE IT FURTHER RESOLVED that in accordance with Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland as amended, the County shall enter into the Agreement for payments in lieu of County real property taxes for the Project subject to the Payment in Lieu of Taxes Agreement attached hereto.

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

SECTION 4. BE IT FURTHER RESOLVED 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 or as required by either the Department or the U. S. Department of Housing and Urban Development 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 therein.

SECTION 5. BE IT FURTHER RESOLVED that copies of this Resolution be sent to the Secretary of Housing and Community Development, State of Maryland.

Adopted this 22nd day of July, 1997.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY:
Dorothy F. Bailey
Chair

ATTEST:

Joyce T. Sweeney
Clerk of the Council

ATTACHMENT A
PROJECT INFORMATION SHEET
SELBORNE HOUSE
429, 431, 433, 435, 437, 501, 503, 505 & 507 Main Street
LAUREL, MARYLAND 20707

COUNCILMANIC DISTRICT 1

OWNER: ODC Selborne House Limited Partnership, a Maryland limited partnership. Orchard Development Corporation Selborne House, Inc. is the managing general partner. They are an affiliate corporation of Orchard Development Corporation, 3979 Old Columbia Pike, Ellicott City, Maryland 21043, (410) 750-1800. They have developed over 600 residential units in Maryland.

COMPLETION DATE: September 1988

PROPERTY DESCRIPTION: ODC Selborne House will be located at 429 - 437 Main Street, Laurel, Maryland. It will be a 4-story building with 126 one-bedroom units. All of the units will be occupied by persons 62 and older whose income is 60 percent of the Washington Area median.

DEVELOPER: Selborne House Limited Partnership
L. Earl Armiger, President
(410) 750-1800

FINANCING AND LOCAL CONTRIBUTION: Sources and amounts of financing are:

State - Tax Exempt Bonds	\$7,500,000
Tax Credit Syndication	2,138,000
HOME Funds	<u>585,000</u>
Total Development Cost	\$10,223,000

Estimate value of PILOT is \$ 57,000.00 a year.

NEIGHBORHOOD/LOCALITY: The neighborhood is located in the City of Laurel, Prince George's County, Maryland. The Main Street location is in a Historic District and the project is part of the city's revitalization plan. Surrounding businesses and services, as well as the nearby Phelps Senior Center, will be readily available to the residents of Selborne House.

PARKING SPACES: 63 surface spaces plus 4 handicapped surface spaces.

PROJECT AMENITIES: The facility will include 126 one-bedroom, one-bath units with full kitchens and a living/dining room area. Amenities contained in the elevator equipped building will include a community/dining room, multi purpose room, library/reading room, hobby/class room, mail room, health room, an office/reception area and public lavatories. A comprehensive Tenant Service Plan will be implemented, providing for both on- and off-site activities for the residents. An on-site van will transport residents to and from the Phelps Senior Center and other off-site activities.

RENTAL STRUCTURE:	One Bedroom	Monthly
	Small	\$500 - \$585
	Medium	\$650 - \$685
	Large	\$685 - \$710

AGREEMENT BETWEEN
ODC Selborne HOUSE LIMITED PARTNERSHIP
AND
PRINCE GEORGE'S COUNTY, MARYLAND

THIS AGREEMENT, Made this _____ day of _____, 1997, by and between ODC Selborne HOUSE LIMITED PARTNERSHIP, a limited partnership of the State of Maryland (the "Owner"), and PRINCE GEORGE'S COUNTY, MARYLAND, a body corporate and politic and political subdivision of the State of Maryland (the "County").

WHEREAS, the Owner is a Maryland limited partnership which has or will acquire a parcel of land located in Laurel, Maryland, more particularly described on Exhibit A attached hereto and by reference made a part hereof (the "Property"), for the purpose of constructing thereon an apartment project containing 126 apartment units and related facilities to provide housing for moderate income elderly residents (the "Project"); and

WHEREAS, the Owner will operate the Project for rental housing on a limited distribution basis pursuant to regulatory agreements between the Owner and the U.S. Department of Housing and Urban Development and the Owner and the County, respectively, and other governmental authorities (the "Regulatory Agreements") executed in connection with the financing of 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 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 in whole or in part; and (iii) 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 County property taxes on said real property; and (iv) the owner of the real property enters into an agreement with the governing body of the County 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 5 years; and

WHEREAS, the Owner hereby represents that the Project will qualify in all respects, under the provisions of said Section 7-506.1, 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. CR-46-1997 adopted on July 22, 1997, 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, a copy of which is attached hereto as Exhibit B and by reference made a part hereof; 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 Section 7-506.1, supra; and

WHEREAS, the Owner and the County, pursuant to the power and authority of said Section 7-506.1, 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 Section 7-506.1, supra, it is agreed as follows:

(1) This Agreement shall become effective as of the date of the initial closing of the First Mortgage, as hereinafter defined (the "Effective Date") and shall remain effective until the Conversion 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, as amended, and the Prince George's County Code, as amended.

Such payments shall be made by the Owner 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) pursuant to the Regulatory Agreements; (ii) the Owner 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 as amended, 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 of Prince George's County real property taxes on the improvements. This Agreement shall not waive the payment of other County taxes, assessments and fees, including but not limited to sanitation taxes, County solid waste service charges, or other taxes assessed by entities or jurisdictions other than the County, including but not limited to State of Maryland taxes, municipal taxes, the Washington Suburban Sanitary Commission, Washington Suburban Transit Commission and the Maryland-National Capital Park and Planning Commission.

(3) Upon execution of this Agreement for the payment of the negotiated sums provided in paragraph (4) hereof, the Property and, when developed, the Project located in Laurel, 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 there is a change in the use of the Project by the Owner without prior written approval of Prince George's County or that December 31st of the tenth (10th) complete calendar year which follows the date of Substantial Completion, as hereinafter defined (the "Conversion 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; however, if Substantial Completion occurs in the first six months of a calendar year, the Owner shall make the payments provided for in

subparagraph (4)(b) for such calendar year, prorated based on the number of months including partial months, 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 (or the earlier date from which prorated payments begin to accrue pursuant to subparagraph 4(a) and continuing until the Conversion Date, the Owner shall make annual payments for each calendar year equal to the County real property taxes which would have been due on account of the assessed value of the Project (the "Normal Annual Tax"); decreased by the amount by which the Normal Annual Tax exceeds net cash flow from the operation of the Project after payment of all expenses of operation (including payment of operating costs and management, servicing and other fees approved in the Regulatory Agreements, debt service on the First Mortgage and Required Reserves) ("Net Cash Flow"), provided such decrease shall not exceed one-half of Normal Annual Tax (the "Deferred Amount"); plus any prior years' Deferred Amounts to the extent of two-thirds of remaining Net Cash Flow; plus interest on the Deferred Amounts from the respective dates on which the Deferred Amounts accrued at the rate of two percent (2%) per annum. The annual payments shall be due and payable (and any interest on Deferred Amounts shall accrue) on March 31st following the end of the calendar year for which such payments are due.

"First Mortgage" shall mean the loan or loans which is provided to the Owner from a mortgage lender for a portion of its Project financing, funded in part by bonds to be issued through the Department of Housing and Community Development of the State of Maryland,

and secured by a first mortgage(s) or deed(s) of trust on the Property (including any loan refinancing such loan). "County Mortgage" shall mean the loan provided to the Owner from Prince George's County, Maryland. "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.

(c) On the first fiscal year commencing after the Conversion Date, the Property shall no longer be exempt from Prince George's County real property taxes and shall commence paying the Normal Annual Tax. In addition, the Owner of such Project shall make additional payments equal to one-twentieth of the aggregate outstanding Deferred Amount plus 1/20 of accrued interest due hereunder to the date of payment, such payments to continue annually thereafter for each of next nineteen (19) successive fiscal years, or until all deferred amounts shall have been paid in full. 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.

(5) (a) All payments under this Agreement (except interest on Deferred Amounts as provided in paragraph 4(b)) shall be subject to the same interest rate (currently eight percent (8%) per annum, but subject to amendment of the State and/or County Codes), 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 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 then current owner of the property and to the holders to all mortgages or deeds of trust. If within thirty (30) days of such notice, the Owner has not paid a sum equal all amounts theretofore due and unpaid hereunder, the County may renegotiate this Agreement, foreclose or seek any other remedy available at law or in equity (including proceeding to Tax Sale).

(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 subparagraph (5)(b) 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 subparagraph (5)(b) of this Agreement.

(7) The Owner shall comply with its covenants regarding the renewal of any annual contributions contract and the maintenance of its housing for lower income persons between the Owner and the Department of Housing and Community Development of the State of

Maryland.

(8) The Owner shall not make any transfer, exchange or refinance of the Property or take any other action which would change its use as a residential rental project except as permitted by the Regulatory Agreements. Upon a transfer, exchange, refinance or any other event that changes the Property's use as a residential rental project except as permitted by the regulatory agreements, the entire amount of deferred payments, plus accrued interest shall become immediately due and payable. The County shall have the right to exercise all of the remedies described in paragraphs 5(a) and (b) herein or any other remedy available at law or in equity in the event of default of payment due under this paragraph.

(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, ODC SELBORNE HOUSE LIMITED PARTNERSHIP, a Maryland limited partnership, has caused this Agreement to be signed in its name by its Managing General Partner, 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:

ODC Selborne HOUSE LIMITED PARTNERSHIP

By: ODC Selborne House, Inc.
Managing General Partner

By:
L. Earl Armiger, President

ATTEST: PRINCE GEORGE'S COUNTY, MARYLAND

By:
Name:
Title:

REVIEWED AS TO FORM AND LEGAL SUFFICIENCY
AND READY FOR SIGNATURE

Deputy County Attorney

STATE OF MARYLAND, PRINCE GEORGE'S COUNTY, 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 County aforesaid, personally appeared , who acknowledged that he is the President of ODC Selborne House, Inc., a Maryland corporation, the managing general partner of ODC SELBORNE HOUSE LIMITED PARTNERSHIP, a Maryland limited partnership and stated that as an officer being authorized to do so, 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 County aforesaid, personally appeared, , Deputy Chief Administrative Officer and (s)he acknowledged that (s)he 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: