

ATTACHMENT B

AMENDED AND RESTATED PAYMENT IN LIEU OF TAXES AGREEMENT

BETWEEN

LAUREL II LLLP

AND

PRINCE GEORGE’S COUNTY, MARYLAND

THIS AMENDED AND RESTATED PILOT AGREEMENT, made this ____ of _____, 2013, by and among LAUREL II LLLP, a limited liability limited partnership organized under the laws 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, Parkview II Limited Partnership, a limited partnership of the State of Maryland (“Previous Owner”), is the ground lessee of that certain parcel of land located in Laurel, Prince George’s County, Maryland, as more particularly described in Exhibit A that is attached hereto and herein incorporated by reference (“Property”); and

WHEREAS, the Previous Owner constructed an elderly housing project on the Property that contains approximately 105 apartment units and utilized the Property to provide housing for low to moderate income elderly residents (“Project”); and

WHEREAS, the Previous Owner operated the Project for rental housing on a limited distribution basis pursuant to a regulatory agreement between the Previous Owner and the State of Maryland Community Development Administration or other governmental authority, which was executed in connection with the Previous Owner’s financing of the Project; and

WHEREAS, the Previous Owner and the County entered into a certain Agreement, dated September 18, 1996 and recorded among the Land Records of Prince George's County, Maryland in Liber No. 11017, folio 657, which agreement provided for the Previous Owner to pay to the County negotiated payment sums in lieu of the payment of ordinary real property tax assessment ("Original PILOT"); and

WHEREAS, Shelter Development, LLC, a Maryland limited liability company ("Shelter"), and the Managing General Partner of Laurel II Development LLLP, which is the Managing General Partner of the Owner, desires that the Project continue to provide housing for low to moderate income elderly residents and in furtherance thereof, Shelter formed the Owner entity to purchase the Project from the Previous Owner, which is currently operated under management of an affiliate of Shelter, in order to qualify for an allocation of low-income housing tax credits to finance the rehabilitation of the Project; and

WHEREAS, the Owner is a Maryland limited liability 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 hereafter referred to as the "Property") for the purpose of owning, renovating, and operating 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 the renovation work being undertaken by the Owner upon its acquisition of the Project is hereafter referred to as the "Renovations"); and

WHEREAS, the Owner desires that the Project continue to benefit from the Original PILOT to ensure the financial feasibility of the Project's planned rehabilitation and continued provision of rental housing for the Project's low to moderate income elderly residents; and

WHEREAS, the Owner desires to assume the Previous Owner's Original PILOT and to replace the Previous Owner's Original PILOT with a new PILOT that will govern the new low-income housing tax credit project created in connection with the Owner's purchase, rehabilitation and financing of 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 Community Development Administration of the Department of Housing and Community Development of the State of Maryland ("CDA") or other governmental authority (the "Regulatory Agreement") executed in connection with the financing of the Project; and

WHEREAS, Section 12-506(b)(10) of the Housing and Community Development Article 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 (2007 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 non-dwelling 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 or

substantially rehabilitated 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 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 all local taxes on said real property; and

WHEREAS, the Project was substantially completed by the Previous Owner after July 1, 1978, and thus meets the requirement described in item (ii) of the preceding recital; and

WHEREAS, the Owner and the Authority hereby represent that the Project will qualify in all respects, under the provisions of said Section 7-505 for 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 _____, 2013, 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 12-506(b)(10) and 7-505, supra; and

WHEREAS, the Owner, the Authority and the County, pursuant to the power and authority of said Sections 12-506(b)(10) or 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 1-506(b) (10) and 7-505, supra, it is agreed as follows:

(1) This Agreement shall become effective on the later of (i) the date of the Execution of this Agreement; and (ii) the date on which the Owner acquires the Property, (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. 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 12-506(b) (10) and 7-505, supra.

(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, but not including State of Maryland real property taxes.

(3) Upon execution of this Agreement for the payment of the negotiated sums provided in paragraph 4 hereof, the Property and the Improvements shall be exempt from Prince George's 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 the Ground Lease between the Owner and the Authority terminates or is redeemed (the “Termination Date”).

(4) (a) For the period from the Effective Date through the first December 31st following the date of “Substantial Completion” of the Renovations (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 Renovations of 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). Seventy-five percent (75%) of the annual net cash flow from the operation of the Project after payment of all must-pay expenses of operation (including payment of management fees, investor services fees, debt service on the First Mortgage Loan and Required Reserves) is referred to as the “75% Cash Flow Amount.” The Owner shall use the 75% Cash Flow Amount to make annual repayments on the State and County Mortgages (defined herein), to the extent required by and in accordance with the applicable loan documents, and the Owner shall then apply any remaining portion of the 75% Cash Flow Amount toward an additional annual payment to the County up to the amount of 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 tax-exempt bond loan to the Owner issued by CDA 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 Mortgages” shall mean, collectively the existing loan provided to the Owner from the Department of Housing and Community Development of the State of Maryland, as assumed by the Owner as of the date of its acquisition of the Project in the approximate amount of \$759,555, and a new Maryland Rental Housing Works loan from CDA to the Owner in the approximate amount of \$1,230,000. “County Mortgage” shall mean the existing HOME loan assumed by the Owner owing to 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 \$150 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 an additional payment. The amount of this additional payment shall equal (i) the total real property taxes that would have been due with respect to the period beginning on the January 1st following the Effective Date and ending on the date described in the preceding sentence, plus (ii) the deferred taxes accrued

by the Previous Owner under the Original PILOT in the approximate amount of \$_____, less (iii) all amounts actually paid under this Agreement, provided, however, that such additional payment shall only be due and shall only be made 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 Loan but prior to payment of amounts owed pursuant to any other loans made to the Project. (The difference between the amounts paid under Clause (c) (iii) and the amounts which would otherwise have been due under Clauses (c)(i) and (c)(ii) above but which are being deferred under the terms of this Agreement are collectively referred to as the “Deferred Amount”). 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 and shall continue in effect for so long as this Agreement remains in effect.

(5) All taxes (as applicable) other than County taxes 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, provided, however, that no interest or penalties shall be assessed upon the Deferred Amount or with respect to the failure by the Owner to pay the Additional Annual Payment due to insufficient amounts available from net cash flow unless the Owner is in default with respect to its payment obligations hereunder.

(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 5 (a) 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 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 5 (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 5 (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.

(11) This Agreement amends and restates in its entirety the terms of the Original PILOT and as of the date hereof, the Original PILOT shall be deemed void and of no further effect (subject, however, to the Owner's obligations for taxes deferred under the Original PILOT in accordance with the terms of Section 4 above).

IN WITNESS WHEREOF, LAUREL II LLLP, a Maryland limited liability limited partnership has caused this Agreement to be signed in its name by its General Partner, Laurel II LLLP, 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/WITNESS:

LAUREL II LLLP

By: Laurel II Development LLLP,
its General Partner

By: Shelter Development, LLC
its General Partner

Name: _____
Title: _____

ATTEST/WITNESS:

HOUSING AUTHORITY OF
PRINCE GEORGE'S COUNTY

By: _____
Name: _____
Title: _____

ATTEST/WITNESS:

PRINCE GEORGE'S COUNTY, MARYLAND

By: _____
Name: _____
Title: _____

REVIEWED AS TO FORM AND LEGAL SUFFICIENCY
AND READY FOR SIGNATURE

Associate 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, LLC, a General Partner of Laurel II Development LLLP, a Maryland limited liability 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:

Witness: _____

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

I HEREBY CERTIFY that on this ____ day of _____, 2013, before me, the Subscriber, a Notary Public of said State of Maryland, in and for Prince George's County aforesaid, personally appeared _____, _____ for the Housing Authority of Prince George's County, who acknowledged (s)he executed the foregoing Agreement on behalf of the Housing Authority of Prince George's County.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

Witness: _____

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

I HEREBY CERTIFY that on this ____ day of _____, 2013, 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 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 and Administration on behalf of Prince George's County, Maryland.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

Witness: _____

EXHIBIT A

BEING KNOWN AND DESIGNATED as PARCEL 'D' (containing 217,919 square feet of land, or 5.0027 acres) on the Plat entitled, "PARCELS C & D (BEING A RESUBDIVISION OF PART OF PARCEL "B"), SOUTH LAUREL SENIOR HIGH SCHOOL', which Plat is recorded among the Plat Records of Prince George's County, Maryland in Plat Book VJ, No. 176, at Plat No. 75.