

**NEGOTIATED PAYMENT IN LIEU OF TAXES AGREEMENT
AND COUNTY PROPERTY TAX DEFERRAL**

Glenmore Apartments Multifamily Residential Rental Project

THIS AGREEMENT FOR NEGOTIATED PAYMENT IN LIEU OF TAXES AND COUNTY PROPERTY TAX DEFERRAL, (the "Agreement") is made as of this ____, day of _____, 2012 (the "Effective Date"), by and between **GLENMORE ASSOCIATES LIMITED PARTNERSHIP**, a limited partnership formed and existing under the laws of the State of Maryland, together with its successors and assigns as hereinafter provided (the "Owner"), and **PRINCE GEORGE'S COUNTY, MARYLAND**, a body corporate and politic and political subdivision of the State of Maryland (the "County").

WITNESSETH, that:

WHEREAS, the Owner is a Maryland limited partnership which has acquired a parcel of land located in Landover, Prince George's County, Maryland, more particularly described on Exhibit A attached hereto and by reference made a part hereof (the "Property"), and has constructed upon the Property a multifamily rental apartment project containing 409 apartment units and related facilities, which provides housing for low to moderate income residents (the "Project"); and

WHEREAS, the Owner operates and, pursuant to agreements entered into with lenders and/or insurers of loans presently upon the Property, will continue to operate the Project for rental housing pursuant to regulatory agreements and covenants between the Owner and the U.S. Department of Housing and Urban Development (said Department being referred to herein as "HUD"), the Owner and the State of Maryland Community Development Administration (Revenue Bonds, (Series 2004 C)), and the Owner and the County, which regulatory agreements and covenants are listed on Exhibit B, attached hereto and incorporated by reference herein (the regulatory agreements and covenants listed on Exhibit B are respectively referred to, in the plural, as the "Regulatory Agreements" and in the singular as a "Regulatory Agreement"), and all of which Regulatory Agreements were required

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by the respective beneficiaries of the Regulatory Agreements to be executed and delivered by the Owner in connection with the construction of the Project under a federal, state or local government program that funded the construction or insured the Project's financing, in whole or in part; and

WHEREAS, Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (2007 Rep. Vol. as amended), (the "Code Provisions") provide, 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;

(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;

(iii) 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

(iv) the owner of the real property enters into an agreement with said 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 five years; and

WHEREAS, the Owner hereby represents that the Project qualifies in all respects, under the Code Provisions, supra, for such an agreement for negotiated payments in lieu of ordinary County real estate taxes upon the Project; and

WHEREAS, pursuant to Resolution No. ___-___-2012 adopted on ____, 2012, the County Council of Prince George's County, Maryland, approved an agreement substantially in the form hereof for payments in lieu of taxes for the Project, and authorized the County Executive to enter into

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such an agreement, a copy of which Resolution is attached hereto as Exhibit C, and by reference made a part hereof; and

WHEREAS, the County agrees to enter into this Agreement for payment of a negotiated sum or sums in lieu of County real property taxes provided that the Owner conducts its operations in accordance with the criteria and controls set forth in said Code Provisions, supra; and

WHEREAS, the Owner and the County, pursuant to the power and authority of said Code Provisions, supra, have agreed that the sum payable by the Owner to the County in lieu of County real property taxes that would otherwise be imposed upon the Project will be \$1.00.

NOW, THEREFORE, in consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of said Code Provisions, supra, and to induce the County to enter into this Agreement, it is agreed as follows:

(1) **Term.** This Agreement shall become effective as of the Effective Date and shall remain in effect until the earlier of: (a) that January 1 immediately following the Tenth (10th) complete calendar year thereafter (the “Conversion Date”); (b) the date on which (i) HUD no longer shall be either the insurer or the holder of that certain Deed of Trust from the Owner to Trustees for Reilly Mortgage Group, Inc. for a portion of the Owner’s Project financing secured by a first mortgage(s) or deed(s) of trust on the Property dated June 9, 2004 and recorded June 10, 2004 among the Land Records of Prince George’s County, Maryland in Liber No. 19663, Page 333, as the same may be modified, supplemented or amended (the “First Mortgage”); (ii) the agreements to which CDA is the

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beneficiary as listed in Exhibit B shall have terminated ; and (iii) Prince George’s County, Maryland shall no longer be the holder of the note securing the HOME deed of trust from the Owner to Trustees for the Prince George’s County, Maryland dated June 10, 2004, and recorded among the Land Records of Prince George’s County, Maryland in Liber No. 19668, Page 119, as the same may be modified, supplemented or amended (the “Second Mortgage”); (items i, ii, and iii above being referred to as the “Regulatory Release Date(s)”; or (c) the Project otherwise fails to meet the requirements of the Code Provisions. The payments to be made by the Owner to the County, provided for herein with respect to the Project shall be in lieu of County real property taxes.

(2) **No Waiver.** This Agreement shall not waive or defer 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) **Payments Due:** (a) For the period from the Effective Date through the first December 31st thereafter, no County property tax shall be due or payable with respect to the Project. To the extent that the Owner has prepaid the Normal Annual Tax (as defined herein) for the period dating from the Effective Date through the remainder of the tax year following the Effective Date, any such

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amounts prepaid by the Owner shall be credited to amounts to be paid by the Owner in the succeeding years' payments(s).

(b) For the period from the first January 1st following the Effective Date and continuing to the Conversion Date or the last to occur of the Regulatory Release Dates, the Owner shall make annual payments for each calendar year of One Dollar (\$1). Each annual payment shall be due and payable on the March 31st following the end of the calendar year for which such payments are due, up to but not including the Conversion Date.

(c) On and after the first to occur of the Conversion Date and the Regulatory Release Date, the Property shall no longer be exempt from County real property taxes and the Owner shall commence paying the annual County real property tax which would otherwise have been payable but for this Agreement (the "Normal Annual Tax").

(d) If the First Mortgage shall be refinanced (other than a HUD Section 223(a)(7) interest rate adjustment refinancing, where there is no ownership change and there is no "cash out" to the Owner) and the County, in its sole discretion, either: (i) does not extend the term of this Agreement or (ii) does not enter another payment in lieu of taxes agreement with respect to the Property and Project, then all funds made available through said refinancing, and not required by HUD, the Community Development Administration or the County to be otherwise applied, shall be applied to pay the Normal Annual Tax.

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(e) The Property and Project may be conveyed by the Owner during the term of this Agreement only if either (i) all then due Normal Annual Tax, together with interest and penalties accrued to the date of payment shall have been paid in full and the Owner in writing delivered to the County shall have terminated the Owner's rights under this Agreement; or (ii) the County in its sole discretion has first approved such conveyance in writing and the successor-owner assumes this Agreement in writing in an agreement executed and approved by the County; provided, however, that to the extent of any conflict between this provision and the Regulatory Agreement with HUD and any HUD rules or guidelines applicable to the First Mortgage and HUD's insurance thereof, said HUD Regulatory Agreement, rules and guidelines shall prevail.

(f) From the occurrence of any of the following events and for so long as such occurrence shall continue, all interest shall accrue at the rate of twelve percent (12%), per annum:

- i. The Project shall cease to be owned by the Owner (except any successor as hereby permitted);
- ii. The Project shall cease to be operated in accordance with the provisions of the Agreements on the attached Exhibit B;

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- iii. The Owner or the Project shall cease to comply with the Code Provisions;
- iv. The Owner shall fail to provide the complete audited operating financial report as required by paragraph (5) hereof, which failure shall continue for 30 days following the Owner's receipt from the County of notice of such failure;
and
- v. The Owner shall fail to make any payment hereby required as and when due without penalty.

(4) **Interest and Penalties:** All payments under this Agreement shall be subject to the same interest rate and penalty, collection, and tax sale provisions of the Prince George's County Code generally applicable to the collection of County property taxes, except as otherwise expressly set forth in this Agreement.

(5) **Financial Statement:** Within ninety (90) days after the first December 31 following the Effective Date, and on 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. As long as HUD insures or holds the note secured by the First Mortgage, the County agrees to accept a copy of the audited statement of financial condition required to be submitted to HUD under the HUD Regulatory Agreement in satisfaction of this requirement. If the Owner has not submitted said financial

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statement within the time specified above, the County may, at its option, declare a default by giving notice to the then current owner of the Property and to the holders to all mortgages or deeds of trust and (if the Owner has failed to cure such default within 30 days from receipt of such notice) pursue any and all of its rights under law.

(6) **Compliance with Law and Regulatory Agreements.** During the term of this Agreement, the Owner shall comply with all of the Regulatory Agreements and covenants listed on Exhibit B, for as long as any of them affect the Project.

(7) **Lower Income Housing.** The Owner shall cause 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 the term of this Agreement. This entire Agreement shall be an obligation running with the Property.

(8) **Amendments.** Any document or agreement referenced hereinabove, or amendments thereto, have been listed on Exhibit B, and are incorporated by reference herein. Any subsequent amendment to any of the agreements listed on Exhibit B 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) **No Assignment/No Waiver.** This Agreement may not be assigned without the County's prior written consent. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

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(10) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(11) **Notice:** All notices, requests, reports, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (i) immediately upon receipt if hand-delivered in accordance with the notice provisions of this Agreement; (ii) on the day after delivery to a nationally recognized overnight courier service, or (iii) on the fifth day after mailing, if mailed to the party to whom such notice is to be given, by registered or certified U.S. mail, return receipt requested, and, in all cases, if prepaid and properly addressed as follows:

To County: Chief Administrative Officer
Prince George's County, Maryland
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

With Copies to: County Attorney
Office of Law, Room 5121
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

To Owner: *[Insert contact information]*

(13) **Governing Law\Venue\Severability:** This Agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws of Prince George's County and the State of Maryland, without regard to its conflicts of law principles.

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(14) **Entire Agreement:** This Agreement incorporates the entire understanding of the parties hereto, and supersedes any and all prior agreements or understandings (written or oral) relating to the subject matter hereof. This Agreement can only be modified in a writing signed by duly authorized representatives of both parties hereto.

END OF TEXT.

[Signature pages follow]

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IN WITNESS WHEREOF, GLENMORE ASSOCIATES LIMITED PARTNERSHIP, a Maryland limited partnership, has caused this Agreement to be signed in its name by Glenmore Associates, LLC, a Maryland limited liability company, its general partner, and PRINCE GEORGE'S COUNTY, MARYLAND has caused its name to be signed by the County Executive, or his designee representative, on the day and year first hereinabove written.

WITNESS:

GLENMORE ASSOCIATES LIMITED PARTNERSHIP
a Maryland limited partnership
By: Glenmore Associates, LLC
a Maryland limited liability company,
its General Partner

By: _____
William D. Miller, Partner

STATE OF MARYLAND,
_____, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2012 before me, the Subscriber, a Notary Public of the State of Maryland in and for the County aforesaid, personally appeared William D. Miller, who acknowledged that he is the Partner of Glenmore Associates, LLC, a Maryland limited liability company, as the general partner of GLENMORE ASSOCIATES LIMITED PARTNERSHIP, a Maryland limited partnership, and, being authorized to do so, stated that he executed the foregoing instrument for the purpose herein contained.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

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WITNESS:

PRINCE GEORGE'S COUNTY, MARYLAND

By: _____

Bradford L. Seamon
Chief Administrative Officer

STATE OF MARYLAND, COUNTY OF PRINCE GEORGE'S

I HEREBY CERTIFY that on this ____ day of _____, 2012 before me, the Subscriber, a Notary Public of the State of Maryland, personally appeared Bradford L. Seamon, Chief Administrative Officer, and he acknowledged that 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: _____

Reviewed as to Legal Sufficiency:

Office of Law

This Agreement for Property by Tax Deferment was prepared by an attorney licensed to practice in the State of Maryland.

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EXHIBIT A

Legal Description

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EXHIBIT B

1. Regulatory Agreement between Glenmore Associates Limited Partnership and the U.S. Department of Housing and Urban Development dated June 10, 2004 and recorded among the Land Records of Prince George's County in Liber R.E.P. No. 19663, folio 341.
2. Occupancy Agreement dated June 10, 2004 between Glenmore Associates Limited Partnership and the Community Development Administration recorded among the Land Records of Prince George's County in Liber R.E.P. No. 19663, folio 401.
3. Declaration of Restrictive Covenants and Regulatory Agreement dated June 10, 2004 between Glenmore Apartments Limited Partnership and Community Development Administration recorded among the Land Records of Prince George's County in Liber R.E.P. No. 19663, folio 383.
4. Extended Low-Income Housing Covenant for Low-Income Housing Tax Credits dated June 10, 2004 between Glenmore Associates Limited Partnership and Community Development Administration recorded among the Land Records of Prince George's County in Liber R.E.P. No. 19663, folio 362.
5. Home Regulatory Agreement, Declaration of Covenants and Deed of Trust dated June 10, 2004 between Glenmore Associates Limited Partnership, Thomas Michael Thompson and Mary Lou McDonough, Trustees, and Prince George's County, Maryland.

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6. EXHIBIT C

Form of County Authorizing Resolution