

FINAL

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2022, Legislative Day No. 13

Bill No. 69-22

Introduced by Ms. Rodvien, Chair
(by request of the County Executive)

By the County Council, June 21, 2022

Introduced and first read on June 21, 2022
Public Hearing set for and held on July 18, 2022
Bill Expires September 24, 2022

By Order: Laura Corby, Administrative Officer

A BILL ENTITLED

1 AN ORDINANCE concerning: Payment in Lieu of Taxes – Willows at Forest Drive,
2 Annapolis, Maryland

3
4 FOR the purpose of approving exemptions from County real property taxes for a certain
5 property located in Annapolis, Maryland; authorizing the County Executive to enter
6 into a certain agreement for payment of a negotiated amount in lieu of County real
7 property taxes; and providing for the time and terms under which the tax exemptions
8 will take effect.

9
10 WHEREAS, the County Council recognizes there is a significant need for quality
11 multifamily housing communities in Anne Arundel County for households of
12 limited income; and

13
14 WHEREAS, exemptions from County real property taxes for certain properties that
15 provide rental housing for persons with limited incomes is authorized by § 7-506.1
16 of the Tax-Property Article of the Annotated Code of Maryland, provided the
17 County and the property owner enter into an agreement for the payment of a
18 negotiated amount in lieu of the County real property tax; now, therefore,

19
20 SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*
21 That, in accordance with § 7-506.1 of the Tax-Property Article of the State Code, there is
22 an exemption from County real property taxes for the real property known as Willows at
23 Forest Drive, which is located at 1701 Forest Drive, one (1) unnumbered parcel on Forest
24 Drive, and two (2) unnumbered parcels on East Juliana Circle, Annapolis, Maryland 21401,
25 currently identified under the Tax Account Numbers 6000-0631-6800, 6000-9010-2218,
26 6702-9009-9221, and 6702-9009-9222 (“Property”).

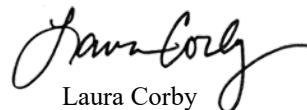
1 SECTION 2. *And be it further enacted*, That the County Executive is hereby authorized
2 to enter into the payment in lieu of taxes (“PILOT”) Agreement between Anne Arundel
3 County and Forest Drive LIHTC, LLC, the owner of the Property, for a payment in lieu of
4 real property taxes for the Property, as more fully described in the PILOT Agreement
5 between Anne Arundel County and Forest Drive LIHTC, LLC attached to this Ordinance
6 as Exhibit A.

7
8 SECTION 3. *And be it further enacted*, That these exemptions and payment in lieu of
9 taxes may not take effect until the requirements of § 7-506.1(a) of the Tax-Property Article
10 of the State Code are met, and shall take effect in accordance with the terms of the PILOT
11 Agreement between Anne Arundel County and Forest Drive LIHTC, LLC.


12
13 SECTION 4. *And be it further enacted*, That this Ordinance shall take effect 45 days
14 from the date it becomes law.

READ AND PASSED this 18th day of July, 2022


By Order:


Laura Corby
Administrative Officer

PRESENTED to the County Executive for his approval this 20th day of July, 2022

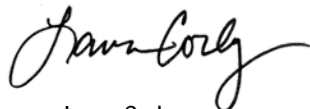

Laura Corby
Administrative Officer

APPROVED AND ENACTED this 25th day of July, 2022


Steuart Pittman
County Executive

EFFECTIVE DATE: September 8, 2022

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF
BILL NO. 69-22 THE ORIGINAL OF WHICH IS RETAINED IN THE FILES
OF THE COUNTY COUNCIL.

A handwritten signature in black ink, appearing to read "Laura Corby". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Laura Corby
Administrative Officer

**AGREEMENT BETWEEN
FOREST DRIVE LIHTC, LLC
AND ANNE ARUNDEL COUNTY, MARYLAND**

THIS AGREEMENT, made this _____ day of _____, 2022, by and between Anne Arundel County, Maryland, a body corporate and politic (hereinafter referred to as the “County”), and Forest Drive LIHTC, LLC, a limited liability company formed in the State of Maryland (hereinafter referred to as the “Owner”).

WHEREAS, the Owner proposes to acquire real property and develop fifty-eight (58) units of rental housing, located at 1701 Forest Drive, one (1) unnumbered parcel on Forest Drive, and two (2) unnumbered parcels on East Juliana Circle, Annapolis, currently identified under the Tax Account Numbers 6000-0631-6800, 6000-9010-2218, 6702-9009-9221, and 6702-9009-9222 (the “Property”), for the purposes of providing rental housing to low income households (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 in the County 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; 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:

(1) funds construction, or insures its financing in whole or in part, or

(2) provides interest subsidy, rent subsidy or rent supplements;
and

(iii) the owner and the governing body of the county enter into an agreement for the payment of a negotiated sum in lieu of applicable County property taxes on the Property; and

(iv) the owner:

(1) agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the government programs and to renew any annual contributions contract or other agreement for rental subsidy or supplement; or

(2) enters into an agreement with the County to allow the 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 (5) years; and

WHEREAS, the Owner plans to operate the Project as rental housing for low income households and intends to comply with Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland; and

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

WHEREAS, pursuant to Anne Arundel County Council Bill No. _____, adopted _____, the County Council of Anne Arundel County, Maryland, approved the terms and conditions for payments in lieu of taxes for the Project, and authorized the County Executive to enter into this Agreement.

NOW, THEREFORE, THIS AGREEMENT, WITNESSETH: In consideration of the mutual covenants, terms, and agreements hereof and pursuant to the power and authority of Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland, it is agreed as follows:

1. The Owner agrees: (a) that it will operate the Project as rental housing for low income households and will limit rents pursuant to the Low Income Housing Tax Credit Covenant between the Owner and the Community Development Administration, a unit of the Division of Development Finance of the Maryland Department of Housing and Community Development (herein the "Extended Use Covenant"); (b) that, with Payment in Lieu of Taxes ("PILOT"), it will

make twelve (12) units available to households with income 20 percent and below the area median income (“AMI”); twenty-seven (27) units available to households with income 30 percent and below AMI; fourteen (14) units available to households with income 40 percent and below AMI; and five (5) units available to households with income 50 percent and below AMI; and (c) that the Project qualifies and will continue to qualify in all respects under the provisions of said Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland.

2. If the Owner acquires the Property prior to July 1, 2024 and the Project is in compliance with paragraph 1 of this Agreement by that date, then, beginning *in Fiscal Year 2025 (July 1, 2024)*, the Property shall be exempt from ordinary County property taxes. If the Owner does not acquire the Property prior to July 1, 2024 or if the Project is not in compliance with paragraph 1 of this Agreement by that date, this Agreement shall become effective on July 1 following the acquisition of the Property and compliance with paragraph 1 of this Agreement. The payments to be made hereunder by the Owner to the County with respect to the Project shall be in lieu of all ordinary County taxes on real property under the Tax-Property Article of the Annotated Code of Maryland. The payments to be made hereunder by the Owner to the County shall be made by the Owner first and accepted by the County through the later of Fiscal Year 2064, ending June 30, 2064, or for a period of 40 years beginning from the commencement of the payment in lieu of taxes under paragraph 2.

3. This Agreement shall be in effect through the later of *Fiscal Year 2064, ending June 30, 2064, or for a period of 40 years beginning from the commencement of the payment in lieu of taxes under paragraph 2*, or until one of the following occurs: (a) the Project is not owned or used for the provision of rental housing and related facilities to low income households at limited rents, pursuant to the Extended Use Covenant; (b) the Project does not comply with

Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland, as amended; or (c) the payment in lieu of taxes is not necessary for the continued financial feasibility of the Project, as solely determined by the County pursuant to Paragraph 9 of this Agreement.

4. If at any time during the term of this Agreement, the County real property taxes are less than the PILOT, the Owner shall pay the ordinary County real property taxes payable had the Property not been tax exempt. The Owner shall not be required to pay both County real property taxes and payment in lieu of taxes.

5. For *Fiscal Year 2025 (July 1, 2024 through June 30, 2025)*, or for the first Fiscal Year after the requirements of paragraph 2 are met, the Owner's annual payment in lieu of taxes shall be equal to **\$11,600**. For *each Fiscal Year thereafter through Fiscal Year 2064, or for a period of 40 years from the commencement of the payment in lieu of taxes under paragraph 2, whichever is later*, the annual payment in lieu of taxes shall be equal to the previous year's fiscal payment plus an annual adjustment factor of four percent (4%) per annum.

6. By July 30th of each year, the County shall bill the Owner for the payment which is due by September 30th of that year, as set forth in this Agreement.

7. Payments due hereunder will be considered delinquent thirty (30) days after the due date of the bill sent to the Owner. Interest and penalties at the rate as set forth in the County Code for overdue property taxes per month shall be charged and collected by the County on all amounts remaining unpaid thirty (30) days after the due date.

8. If the Owner is in default for one hundred eighty (180) days for any payments required under any of the provisions of this Agreement, the County may, at its option, declare a default by providing written notice of the default to the Owner and to the holders of all mortgages or deeds of trust. If within thirty (30) days of such notice, the payments have not been brought

current, then the County may, at its option, declare all amounts due as follows: a sum equal to the total real property taxes which would have been due from the Owner in the absence of this Agreement for the period covered by the outstanding payments, plus all interest and penalties, if any, less any portion of such payment actually paid under this Agreement. To enforce its rights under this Paragraph, the County may renegotiate this Agreement, foreclose, or seek any other remedy available at law or in equity. Notwithstanding anything to the contrary which is or might be contained in this Agreement, payments due under this Paragraph shall be considered a first lien against the Property and superior to any other liens placed upon the Property. Further, notwithstanding anything to the contrary contained herein, the County hereby agrees that any cure of any default made or tendered on behalf of the Owner by a partner of the Owner or its affiliate or a mortgagee of the Owner shall be deemed to be a cure by the Owner, and accepted or rejected on the same basis as if made or tendered by the Owner. A partner of the Owner or its affiliate or a mortgagee, in each case who has provided its address to the County, shall have a period of thirty (30) days after receipt of notice, or such longer period of time as may set forth for the Owner herein, the right, but not the obligation, to cure a default prior to exercise of remedies by the County hereunder.

9. Beginning on July 1, 2024 or on July 1 of the year after which the requirements of paragraph 2 are met, and for each successive five (5) year period from that date throughout the term of this Agreement, the Owner shall submit to the County Office of Finance complete audited financial reports for the Project for the previous five (5) years and a projection of Project's income and expenses for the next five (5) year period. If based on a review of the audited financial reports and the projections for the Project, the County determines that the Project has net cash from the operation of the Project after payment of all expenses (including, but not limited to, reimbursement

of all certified development and construction costs, management fees, investor servicing fees, debt service payments (including any payments from Surplus Cash required to be made by the Owner under any first priority or subordinate debt loan documents), anticipated costs to meet the physical and social needs of the Project, reasonable asset management fees to the general partner, payments of deferred developer fee, taxes owed to the State, and the payments required under this Agreement) and a eight percent (8%) return on the tax credit equity investment, calculated on a cumulative basis, then the County may modify the PILOT at that time to require the Owner to apply such net cash toward the difference between taxes otherwise payable had the Property not been exempt from ordinary County real property taxes based on the assessment for Anne Arundel County real property taxes for the Project and the payments required under this Agreement, or the County may decide that a PILOT is no longer needed and may choose to discontinue its obligations under this Agreement.

10. The Owner shall not make any transfer or exchange of the Property which would change its use as a residential rental property during the period of the PILOT.

11. This Agreement may be assigned to a holder of a mortgage or deed of trust or its successor in the event of a foreclosure, provided that the assignee shall be subject to the terms and conditions of this Agreement.

12. For the purposes of this Agreement, all notices shall be hand-delivered or mailed by first class mail or certified mail, return receipt requested. Notices shall be given to the parties as follows:

| | |
|------------|-------------------------------|
| TO COUNTY: | Office of Finance |
| | Anne Arundel County, Maryland |
| | MS 1103 |
| | 44 Calvert Street |
| | Annapolis, Maryland 21401 |

With a copy to: Anne Arundel County
Office of Law
2660 Riva Road, 4th Floor
Annapolis, Maryland 21401

TO OWNER: Forest Drive LIHTC, LLC
Attn: M Brad Ingerman
5 Powell Lane
Collingswood, NJ 08108

Each notice that is sent by one party to the other party at the listed address shall be presumed to have been received three (3) days after the date of mailing; except when prior written notice is given by one party to the other that a party or an address has changed. Notwithstanding any provision to the contrary contained in this Agreement, any person or party not listed in this paragraph shall not be entitled to notice as may be required by this Agreement, unless one party notifies the other party that additional notice shall also be sent to such person or party.

13. This Agreement shall inure to the parties hereto and their respective successors, assigns, and/or legal representatives, except that this Agreement shall not survive a sale or transfer of the Property or the sale or transfer of the partnership interest of the Owner in lieu of the sale of the Property (excluding transfers made to effectuate initial finance closing), unless the continued financial need for the PILOT can be demonstrated and the transfer of this agreement is approved by the County Council.

14. It is understood and agreed by the execution of this Agreement that the County does not waive any rights of governmental immunity which it may have in any damage suits against it, and that the County reserves the right to plead governmental immunity in such suit in law or in equity or such pleading as is appropriate notwithstanding the execution of this Agreement.

15. This Agreement shall be governed by Maryland law and any actions between the parties hereto shall be brought in and vest jurisdiction and venue solely in the Circuit Court for

Anne Arundel County.

IN WITNESS WHEREOF, the County has caused this Agreement to be signed in its name by the County Executive, to be attested to by the Secretary of the County Executive, and to have the County Seal affixed hereto; and the Owner has caused this Agreement to be signed in its name by its Managing Member, duly attested to by its Secretary.

ATTEST: FOREST DRIVE LIHTC, LLC, a Maryland limited liability company

By: Forest Drive MM, LLC, a Maryland limited liability company, its Managing Member

By: _____ (SEAL)
M. Brad Ingerman
President

ATTEST: ANNE ARUNDEL COUNTY, MARYLAND

By: _____ (Seal)
Matthew J. Power
Chief Administrative Officer

APPROVED FOR FORM AND LEGAL SUFFICIENCY
ANNE ARUNDEL COUNTY, MARYLAND
GREGORY J. SWAIN, COUNTY ATTORNEY

By: _____
Office of Law
Date _____

APPROVED:

By: _____
Controller
Date _____