

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2013 Legislative Session

Legislative Day No. 04

Resolution No. 23-2013

Introduced by: The President of the Council at the request of the County Executive

A RESOLUTION APPROVING AN AGREEMENT FOR PAYMENT IN LIEU OF TAXES BETWEEN WICOMICO COUNTY, MARYLAND, AND PINE BLUFF ESTATES, LLC AND AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE THE AGREEMENT.

WHEREAS, the County Council, on February 19, 2013, approved Resolution No. 19-2013, authorizing an Agreement for Payment in Lieu of Taxes between Wicomico County, Maryland and Pine Bluff Estates, LLC; and

WHEREAS, the County Executive recommends the approval of the Agreement For Payment in Lieu of Taxes attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, by the County Council of Wicomico County, Maryland that the Agreement For Payment in Lieu of Taxes, attached as Exhibit A, is hereby approved and the County Executive is hereby authorized to execute said Agreement For Payment in Lieu of Taxes on behalf of Wicomico County, Maryland.

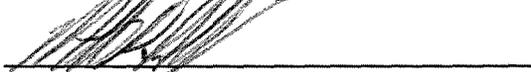
Done at Salisbury, Maryland, this 5th day of March, 2013.

ATTEST:



Matthew E. Creamer,
Council Administrator

COUNTY COUNCIL OF
WICOMICO COUNTY, MARYLAND



Matt Holloway,
Council President

CERTIFICATION

This Resolution was Adopted , Adopted with Amendments , Failed , Withdraw by the County Council on March 5, 2013.

Certified by


Matthew E. Creamer, Council Administrator

AGREEMENT
FOR PAYMENT IN LIEU OF TAXES

This Agreement is made this ____ day of March, 2013, by and among Wicomico County, Maryland, a body corporate and politic, and Pine Bluff Estates, LLC, a Maryland limited liability company.

PREAMBLE

Wicomico County, Maryland recognizes that there is a significant need for quality affordable housing units in the County for senior citizens.

Pine Bluff Estates, LLC may acquire from the State of Maryland the real property popularly known as "Pine Bluff Village Apartments" which occupies parcels currently known as Parcels A, B and C, more particularly described on Exhibit A, and thereafter continue to operate the approximately 150 income qualifying apartment units as affordable housing for seniors and/or disabled persons (the "Project").

Pine Bluff Estates, LLC may also acquire from the State of Maryland the real property and improvements that currently occupy the parcel known as Parcel D and also more particularly described on Exhibit A.

The County is duly authorized to enter into and deliver this Agreement pursuant to the County's duly adopted Resolution No. 19-2013.

The parties hereto, upon the mutual understanding that the "Project", may be operated in conformity with Section 7-505 or similar legislation pertaining to payments in lieu of the county's real property tax, wish to enter into this Agreement for negotiated payments in lieu of real property taxes to facilitate the acquisition and operation of the "Project" and, and thereby continue to make available to citizens of the County needed affordable housing and on-site services for seniors and/or disabled persons in conformity with Section 7-505 or similar legislation pertaining to payments in lieu of the county's real property tax.

NOW, THEREFORE, in consideration of the premises, the parties agree as follows:

1. Representations. Pine Bluff Estates, LLC makes the following affirmative representations as the basis for the undertakings on the County's part herein contained:

(a) (i) Pine Bluff Estates, LLC is a limited liability company duly formed under the laws of the State of Maryland; (ii) the Pine Bluff Estates, LLC has the legal capacity to own and operate the "Project" and has all necessary right and authority to enter into this Agreement for the full term hereof; and (iii) this Agreement has been duly authorized by Pine Bluff Estates, LLC.

(b) This Agreement, has been duly executed and delivered on behalf of Pine Bluff Estates, LLC, and constitutes the legal, valid and binding obligation of Pine Bluff Estates, LLC enforceable in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights.

(c) Pine Bluff Estates, LLC intends to operate the "Project" in conformity with Section 7-505 of the Tax Property Article of the Maryland Code or similar legislation pertaining to payments in lieu of the county's real property tax at all times during the term of this Agreement.

2. PILOT. The payments to be made by Pine Bluff Estates, LLC and its successors and or assigns to the County, provided for herein with respect to the "Project", shall be in lieu of certain

Wicomico County real property taxes.

3. Duration. Provided that the "Project" continues to be owned by Pine Bluff Estates, LLC or its successors and or assigns and is operated in accordance with this Agreement, then, for twenty-five (25) years beginning with the date Pine Bluff Estates, LLC acquires fee simple title to the real property, hereinafter referred to as the "PILOT Period," the "Project" shall be exempt from Wicomico County real property taxes. From and after termination of that 25-year period, or such earlier date that the "Project" is no longer operated in accordance with this Agreement, the "Project" shall be subject to all regular real property taxes that may be levied, and the Pine Bluff Estates, LLC and its successors and or assigns shall be liable for such taxes in accordance with applicable law.

4. PILOT Payments. During the PILOT Period, Pine Bluff Estates, LLC and its successors and or assigns agrees to pay to the County, and the County agrees to accept each year in lieu of County real property taxes, a Pilot Payment to be determined as follows: 40% of the assessed valuation of the improvements only, times the Wicomico County tax rate as determined and changed from time to time, to the effect that such payment in lieu of taxes shall be 40% of the amount which would be payable as taxes with respect to the improvements if the property were subject to regular Wicomico County levy, and nothing shall be paid with respect to the land. The PILOT payment shall be billed by Wicomico County and become due and payable at the same time as County real property taxes. The property shall be assessed and reassessed from time to time as though for purposes of County taxation according to the regular methods and practices applicable to other real property of a similar classification in Wicomico County.

5. Rights and Remedies. Pine Bluff Estates, LLC and its successors and or assigns shall make its PILOT Payment in lieu of taxes as and when taxes would otherwise be due in the absence of this Agreement. In the event of nonpayment, the County shall have the right to terminate this Agreement upon sixty (60) days' prior written notice to Pine Bluff Estates, LLC and its successors and or assigns and to each of the Pine Bluff Estates, LLC and its successors and or assigns mortgage lenders listed on Exhibit B attached hereto and as may be amended by notice to the County from time to time (collectively, the "Lenders"); provided, however, that if the payment in lieu of taxes is made within such sixty-day period, this Agreement shall remain in full force and effect.

6. Occupancy Requirements. This Agreement shall remain in full force and effect for as long as Pine Bluff Estates, LLC and its successors and or assigns shall rent all residential units in the "Project" designated for seniors and/or disabled persons, and shall hold all vacant units available for rent, to seniors and/or disabled persons who qualify for affordable housing as determined from time to time by the United States Department of Housing and Urban Development or any successor organization to which administrative authority is transferred or any other similar program.

7. Term. The County shall have the right to terminate this Agreement at any time by written notice to Pine Bluff Estates, LLC if the "Project" is no longer being operated in accordance with this Agreement; provided, however, Pine Bluff Estates, LLC shall have a reasonable period of not less than one-hundred twenty (120) days after written notice of such noncompliance to bring the "Project" back into compliance. Without limiting the generality of the foregoing, a reasonable time shall include such time as may be necessary to evict any non-complying tenants and to re-let their units. In the event this Agreement is terminated for any reason, after any applicable notice and cure period and the failure to cure such breach, then the "Project" shall only be subject to pay the County real property taxes that it would otherwise be obligated to pay on a go forward basis from the date of said termination had this Agreement not been in affect but, in no event, shall the "Project", be subject to, nor shall Pine Bluff Estates, LLC and its successors and or assigns be required to, reimburse the County for any real property taxes that were waived prior to the termination in connection with this Agreement.

8. Parcel D. In the event Pine Bluff Estates, LLC also acquires from the State of Maryland Parcel D, and Parcel D is operated in conformity with Section 7-505 or similar legislation pertaining to

payments in lieu of the county's real property tax, including but not limited to operation as an "essential service facility," then Parcel D shall be deemed part of the "Project" for the purposes of this agreement. In the event Parcel D, at any time, is or becomes ineligible for the benefit of this Agreement, then such ineligibility shall only impact Parcel D with respect to a requirement to pay County taxes and shall in no way affect the Parcels A, B, or C with respect to this Agreement.

9. Assignment. This Agreement shall bind and inure to the benefit of the parties hereto and their parents, subsidiaries, affiliates, successors and assigns. This Agreement may be assigned by Pine Bluff Estates, LLC and its successors and or assigns upon written notice to the County.

ATTEST:

WICOMICO COUNTY, MARYLAND

R. Wayne Strausburg,
Director of Administration

Richard M. Pollitt, Jr.,
County Executive

WITNESS:

PINE BLUFF ESTATES, LLC

Yitzchok Rokowsky
Managing Director

STATE OF MARYLAND, WICOMICO COUNTY TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2013, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared Richard M. Pollitt, Jr., who acknowledged himself to be the County Executive of Wicomico County, Maryland, and that he, as such Executive, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing, in my presence, the name of the County by himself as Executive and certified under due form of law that the matters and facts hereinbefore set forth are true and correct to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

STATE OF MARYLAND, WICOMICO COUNTY TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2013, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared Yitzchok Rokowsky, who acknowledged himself/herself to be the Managing Director of Pine Bluff Estates, LLC, and that he/she, as such Managing Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing, in my presence, the name of the Corporation by himself/herself as _____ and certified under due form of law that the matters and facts hereinbefore set forth are true and correct to the best of his/her knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

EXHIBIT "B"

Bank of Hampton Roads
Ghent Branch
Attention: Mary S. Oliver
539 West 21st Street
Norfolk, Virginia 23517

With a copy to:

Pine Bluff Estates, LLC c/o Tryko Partners
Attention: Chief Financial Officer
575 Route 70, 2nd floor
Brick, NJ 08723