CA082939

BOARD OF COMMISSIONERS AGENDA ROUTE SHEET
REFERRED TO COMMISSION COMMITTEE NUMBER
FOR BOARD ACTION ON

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1. **RESOLUTION APPROVING AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR BEARMAN GOLDEN GARDENS, INC. a Tennessee not-for-profit corporation, PURSUANT TO TENNESSEE CODE ANNOTATED 67-5-207, et seq.**

   SPONSORED BY COMMISSIONER DEIDRE MALONE

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2. THIS ACTON WILL ( ) WILL NOT (XX) REQUIRE EXPENDITURE OF COUNTY FUNDS.

3. APPROVAL:

   DEPARTMENT HEAD:_____ DATE:_____

   a Smith 7.24.08 FINANCE DEPT.: Mike Swift DATE: 7/24/08

   Asst COUNTY ATTORNEY: Thos E Wms DATE: 7-24-08

   DIVISION DIRECTOR:_____ DATE:_____

   CHIEF ADMINISTRATIVE OFFICER: [signature] DATE: 7-24-08

   JURISDICTIONAL ELECTED OFFICIAL:_____ DATE:_____

4. REFERRED TO COMMISSION COMMITTEE_____ DATE:_____

   CHAIRMAN:_____ DATE:_____

5. RETURNED TO ADMINISTRATION/JURISDICTIONAL ELECTED OFFICIAL BY DIRECTOR

   OF COUNTY COMMISSION_____ DATE:_____

COMMENTS:_____

6. REQUIRED ATTACHMENTS (when applicable)

1. (X) SUMMARY SHEET	6. (X) RESOLUTION ( ) ORDINANCE
2. ( ) EOC DOCUMENTS	7. ( ) BUDGET FORMS
3. ( ) BID SHEETS	8. ( ) PCB FORMS
4. ( ) BIOGRAPHICAL SHEETS (Appointments Only)	9. ( ) RIGHT-OF-WAY AGREEMENT ( ) QUITCLAIM DEED
5. ( ) PLATS	10. (X) OTHER – PILOT AGREEMENT, EXHIBITS--Board Minutes, Map

SUMMARY SHEET

I. Description of Item:

RESOLUTION APPROVING AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR BEARMAN GOLDEN GARDENS, INC. a Tennessee not-for-profit corporation, PURSUANT TO TENNESSEE CODE ANNOTATED 67-5-207, et seq.

SPONSORED BY COMMISSIONER DEIDRE MALONE

II. Source and Amount of Funding:

Pilot Agreement will cover Shelby County's cost of providing improvements, facilities and services to the development while granting real property tax freeze against the real estate.

III. Contract Items

A. PILOT Agreement in lieu of Taxes pursuant to statutory authority to develop commerce. Joint Agreement between city of Memphis, applicant and Shelby County.

B. Exemption subject to State Board of Equalization approval, and amount to be determined per statutory guidelines and authority.

IV. Additional Information Relevant to approval of this item

Approval of this PILOT Agreement is to be made consistent with providing housing facilities for Low income Elderly and Handicap via use of Tax Freeze for eligible and qualified entities.

ITEM #_____ PREPARED BY: THOMAS WILLIAMS

COMMISSIONER_____ APPROVED BY THOMAS WILLIAMS

RESOLUTION APPROVING AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR BEARMAN GOLDEN GARDENS, INC. a Tennessee not-for-profit corporation, PURSUANT TO TENNESSEE CODE ANNOTATED 67-5-207, et seq.

SPONSORED BY COMMISSIONER DEIDRE MALONE

WHEREAS, T.C.A. Section 67-5-207 states that property of Tennessee not-for-profit corporations built under Section 202 of the National Housing Act of 1959 and used for housing for low income elderly or handicapped persons may be exempted from real property taxes, as long as such property complies with the provisions of said Section; and

WHEREAS, T.C.A. Section 67-5-207 (a) (2) provides for payment in lieu of real property taxes to be made by property granted an exemption under this Section by the State of Tennessee Board of Equalization, in amounts not to exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the exempt property; and

WHEREAS, Bearman Golden Gardens, Inc., a qualifying Tennessee not-for-profit corporation ("BGG") owning real property located at 4755 Neely Road, Memphis, Shelby County, Tennessee (the "Property") has applied to the State Board of Equalization for an exemption from real property taxes for the Property and said exemption is conditionally granted providing certain conditions, including the filing of an agreement for payment in lieu of real property taxes to the City and the County, are met; and

WHEREAS, BGG desires to enter into this Agreement with the City and County for payments in lieu of real property taxes to be made by BGG to the County, in accordance with T.C.A. 67-5-207; and

WHEREAS, the City and County desire to enter this Agreement with BGG for payments in lieu of real property taxes to be made by BGG to the County, in accordance with T.C.A. 67-5-207; and

WHEREAS, resolution of the Council of the City of Memphis, Tennessee, its authority, pursuant to T.C.A. Section 67-5-207, et seq. has been delegated to The Health, Educational and Housing Facility Board of the City of Memphis (the "City") that will execute the Agreement for Payment in Lieu of Taxes for BGG on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF SHELBY, TENNESSEE, that:

1. The Agreement for Payment in Lieu of Taxes for Bearman Golden Gardens is hereby approved.

2. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, BGG shall-pay to the City and County taxing authorities for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) an amount equaling the estimated costs incurred by the City and County to provide improvements, facilities and/or services to the Property, equal to twenty-

five (25%) percent of the assessed value on the property as of the effective date of this agreement) in payments in lieu of real property tax.

3. Within thirty (30) days of the granting of the tax exemption, BGG shall pay to the City and County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

4. Of the total annual payments in lieu of tax provided for in Paragraph 2, one-half shall be paid to the City, and one-half shall be paid to the County.

5. Subject to Paragraph 6 below, the payments in lieu of tax required by this agreement are to be made on or before August 31st of each year for the City of Memphis and February 28th[t] of each year for the County. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

6. The payment in lieu of tax provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Section 67-5-207.

7. The parties to this Agreement acknowledge that the costs to the City and the County to provide improvements, facilities and/or services to the Property may become greater than the amount of the payments in lieu of tax to be made pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the City and County to accept payments in lieu of real property tax in amounts less than such costs, and in order to lessen the burden on the City and the County of providing improvements, facilities and/or services to BGG, BGG agrees that every three (3) years from the date of this agreement it will cooperate fully with the City and/or County to re-negotiate the terms of this agreement.

8. The parties agree that the payments in lieu of real property tax provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the City or County in the future.

9. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

_____
A C Wharton, Jr., Shelby County Mayor

Date:_____

ATTEST:

_____
Clerk of County Commission

ADOPTED:_____

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

THIS AGREEMENT is made and entered into by and among Bearman-Golden Gardens, Inc., a Tennessee not-for-profit corporation ("BGG"), The Health, Educational and Housing Facility Board of the City of Memphis, Tennessee, as representative for and on behalf of the City of Memphis (the "City") and the County of Shelby (the "County"), for payments-in-lieu of real property tax to be made by BGG to the City and County.

WHEREAS, BGG is the owner of a certain parcel of real property particularly described on Exhibit "A" hereto, which property is located at 4755 Neely Road, Memphis, Shelby County, Tennessee, and which is identified in the office of the Treasurer of the City as Tax Parcel Number 07608900075 and 07608900076; and in the County Assessor under Tax Parcel Number 07608900000750 and 07608900000760 (the "Property"); and

WHEREAS, the Property is improved as a 55 one bedroom unit apartment building for elderly and handicapped persons and has been built under Section 202 of the National Affordable Housing Act and is located on the Property; and

WHEREAS, the Property is encumbered by a Deed of Trust recorded as Instrument Number _____, [and is subject to a Capital Advance Program Regulatory Agreement recorded as Instrument Number _____ (the "HUD Documents")], all in the County Register's Office, and the HUD Documents require that the Property must be operated as rental housing for very low income elderly or disabled persons for a period of forty (40) years, beginning as of _____, pursuant to Section 202 of the National Housing Act of 1959 (12 U.S.C. Section 1701q); and

WHEREAS, T.C.A. Section 67-5-207 states that property of Tennessee not-for-profit corporations built under Section 202 of the National Housing Act of 1959 and used for housing for low income elderly or handicapped persons may be exempted from real property taxes, as long as such property complies with the provisions of said Section; and

WHEREAS, T.C.A. Section 67-5-207 (a) (2) provides for payment in lieu of real property taxes to be made by property granted an exemption under this Section, in amounts not to exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the exempt property; and

WHEREAS, BGG has applied to the State Board of Equalization for an exemption from real property taxes for the Property and said exemption is conditionally granted providing certain conditions, including the filing of an agreement for payment in lieu of real property taxes to the City and the County, are met; and

WHEREAS, the City and the County agree that BGG complies with the intent of the statute and that the Property and its intended use complies with the provisions of T.C.A Section 67-5-207; and

WHEREAS, BGG, the City and the County all desire to enter this Agreement for payments in lieu of real property taxes to be made by BGG to the City and County, in accordance with T.C.A. Section 67-5-207.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET OUT HEREIN, the receipt and sufficiency of such being hereby acknowledged, the parties agree as follows:

1. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, BGG shall pay to the City and the County for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) the total sum of $_____ (an amount equal to twenty-five (25%) percent of

the assessed value on the property as of the effective date of this agreement) in payments in lieu of real property tax.

2. Within thirty (30) days of the granting of the tax exemption, BGG shall pay to the City and the County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

3. Of the total annual payments in lieu of tax provided for in Paragraph 1, one-half shall be paid to the City, and one-half shall be paid to the County.

4. Subject to Paragraph 6 below, the payments in lieu of tax required by this Agreement are to be made on or before August 31st of each year to the City and February 28th to the County. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

5. The payment in lieu of tax provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Section 67-5-207.

6. The parties to this Agreement acknowledge that the costs to the City and the County to provide improvements, facilities and/or services to the Property are greater than the amount of the payments in lieu of tax to be made pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the City and County to accept payments in lieu of real property tax in amounts less than such costs, and in order to lessen the burden on the City and the County of providing improvements, facilities and/or services to BGG, BGG agrees that every three (3) years from the date of this agreement it will cooperate fully with the City and/or County to re-negotiate the terms of this agreement.

7. The parties agree that the payments in lieu of real property tax provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the City or County in the future.

8. This Agreement shall be governed by, and construed in accordance with, the law of the State of Tennessee.

9. This Agreement shall inure to the benefit of, and shall be enforceable by and against, the parties hereto, their respective successors and assigns.

10. BGG represents and warrants that it is a not-for-profit corporation duly organized and incorporated in the State of Tennessee; that it has received and at all time during the period of this Agreement will maintain federal tax exempt status under Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended; and that it is, and the Property is, and that it and the Property at all times during the period of this Agreement will remain, in full compliance with the HUD Documents, the National Housing Act of 1959 and other applicable law affecting eligibility for exemption from real property taxes.

IN WITNESS WHEREOF, BGG, the City and the County have executed this Agreement the day and year first written above.

BEARMAN-GOLDEN GARDENS, INC.

BY:_____

TITLE:_____

ATTEST:

_____
SECRETARY

THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF MEMPHIS, TENNESSEE, As Representative and on Behalf of CITY OF MEMPHIS, TENNESSEE

BY:_____
DANIEL T. REID, CHAIRMAN

APPROVED AS TO FORM:

_____
GENERAL COUNSEL

COUNTY OF SHELBY, TENNESSEE

BY:_____
A C WHARTON, MAYOR

ATTEST:

_____
CLERK OF COMMISSION

APPROVED AS TO FORM:

_____
ASST. COUNTY ATTORNEY