

# County Council Of Howard County, Maryland

2019 Legislative Session

Legislative Day No. 8

Resolution No. 97-2019

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION approving the terms and conditions of a Payment in Lieu of Taxes Agreement by and between the Howard County, Maryland and Robinson Overlook Limited Partnership, a limited partnership of the State of Maryland, for a rental housing development to be known as Robinson Overlook, and finding that the Development meets the requirements of certain Special Affordable Housing Opportunities.

Introduced and read first time June 3, 2019.

By order Jessica Feldmark  
Jessica Feldmark, Administrator

Read for a second time at a public hearing on June 17, 2019.

Tabled 7/1/19

By order Jessica Feldmark  
Jessica Feldmark, Administrator

This Resolution was read the third time and was Adopted\_\_\_, Adopted with amendments , Failed\_\_\_, Withdrawn\_\_\_, by the County Council

on July 29, 2019.

Certified By Jessica Feldmark  
Jessica Feldmark, Administrator

Approved by the County Executive August 5, 2019

Calvin Ball  
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1           **WHEREAS**, Robinson Overlook Limited Partnership, a limited partnership of the State of  
2 Maryland (the “Partnership”), has contracted to develop certain real property (the “Property”)  
3 located on Grace Drive in Columbia, Maryland; and  
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5           **WHEREAS**, The Partnership proposes to construct and operate on the Property a 48-unit  
6 mixed-income rental housing development to be known as Robinson Overlook (the  
7 “Development”). 43 units will be rented to households that earn at or below 60 percent of area  
8 Median Income of the Baltimore Metropolitan Statistical Area (“AMI”), of which 8 units will be  
9 rented to residents with disabilities who earn at or below 50 percent of AMI; and  
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11           **WHEREAS**, the Partnership has applied to the Maryland Department of Housing and  
12 Community Development, either directly or through its Community Development Administration  
13 for (i) equity financing derived from Low Income Housing Tax Credits in the approximate amount  
14 of Twelve Million Nine Hundred Thirty-Four Thousand Four Hundred Sixty-Seven Dollars  
15 (\$12,934,467), and (ii) a Rental Housing Programs Fund loan in the amount of One Million Eight  
16 Hundred Seventy-Five Thousand Dollars (\$1,875,000) (collectively, the “State Financing  
17 Programs”); and  
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19           **WHEREAS**, pursuant to the State Financing Programs, the Development will provide  
20 housing for lower income persons; and  
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22           **WHEREAS**, the Partnership has requested that the County permit the Partnership to make  
23 payments in lieu of County real property taxes (the “PILOT”) pursuant to Section 7-506.1 of the  
24 Tax-Property Article of the Annotated Code of Maryland; and  
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26           **WHEREAS**, the Partnership has demonstrated to the County that an agreement for a  
27 PILOT is necessary to make the Development economically feasible; and  
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29           **WHEREAS**, the ~~Development has failed~~ Development is projected to fail the School  
30 Capacity Test set forth in Section 16.1110(y) of the Adequate Public Facilities Act of Howard  
31 County (the “Act”); and

1           **WHEREAS**, the Partnership is requesting that the Howard County Department of  
2 Planning and Zoning (“DPZ”) authorize the Development to proceed subject to the Special  
3 Affordable Housing Opportunities provision set forth in Section 16.1103(e) of the Act; and  
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5           **WHEREAS**, DPZ authorization requires that 1) At least 40 percent of the units shall be  
6 affordable to households earning 60 percent or less of the metropolitan statistical area median  
7 income; 2) The project or phase of a project is led by or in partnership with a local nonprofit or the  
8 Housing Commission; 3) The project or phase of a project is seeking or has received an allocation  
9 of Low-Income Housing Tax Credits or other state or federal financial assistance for affordable  
10 housing; 4) The project or phase of a project has obtained a letter of support from the County  
11 Executive; and 5) the County Council and County Executive have approved either a Payment in  
12 Lieu of Taxes agreement for the project or a resolution authorizing the project to proceed; and  
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14           **WHEREAS**, the County Council shall consider as part of its approval of a Payment in  
15 Lieu of Taxes agreement 1) The capacity utilization at the school or schools impacted by the  
16 project and at adjacent schools, including limiting the potential impact on any elementary or  
17 middle school with a capacity utilization rate greater than 115 percent unless an adjacent school  
18 with the same grade levels has a capacity utilization rate of 100 percent or less; 2) Estimated  
19 student generation from the project; 3) Any potential for the Board of Education to add capacity  
20 to the impacted school or schools through redistricting, facility expansion, or other programs; and  
21 4) The need for affordable housing in the County, including factors such as the housing cost burden  
22 on families, the availability of housing for individuals with disabilities, and the extent of  
23 homelessness among families and school children; and  
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25           **WHEREAS**, the County has evaluated and found that the Development meets the  
26 requirements of the Special Affordable Housing Opportunities provision set forth in Section  
27 16.1103(e)(1)-(e)(4) of the Act; and  
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29           **WHEREAS**, in order to induce the Partnership to provide affordable housing in Howard  
30 County, it is in the interest of the County to accept a PILOT subject to the terms and conditions of  
31 the PILOT Agreement (the “Agreement”) attached to this Resolution as “Exhibit 1”.

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**NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County, Maryland this 29<sup>th</sup> day of July, 2019, that:

- (1) The Development meets the requirements of the Special Affordable Housing Opportunities provision set forth in Section 16.1103(e)(1)-(e)(4) of the Act.
- (2) In accordance with Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland, the County shall abate all County real property taxes for the Development subject to the terms and conditions of the Payment in Lieu of Taxes Agreement (the “Agreement”) attached to this Resolution as “Exhibit 1”.
- (3) The County Executive is hereby authorized to execute and deliver the Agreement in the name and on behalf of the County in substantially the form attached.
- (4) The County Executive, prior to execution and delivery of the Agreement, may make such changes or modifications to the Agreement as he deems appropriate in order to accomplish the purpose of the transactions authorized by this Resolution, provided that such changes or modifications shall be within the scope of the transactions authorized by this Resolution; and the execution of the Agreement by the County Executive shall be conclusive evidence of the approval by the County Executive of all changes or modifications to the Agreement, and the Agreement shall thereupon become binding upon the County in accordance with its terms.

Development: Robinson Overlook

**PAYMENT IN LIEU OF TAXES AGREEMENT**

**THIS AGREEMENT** (this “Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between ROBINSON OVERLOOK LIMITED PARTNERSHIP, a limited partnership of the State of Maryland (the “Partnership”) and HOWARD COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (the “County”).

**RECITALS**

A. The Partnership has contracted to acquire certain real property located on 7410 Grace Drive in Columbia, Maryland, which real property is more particularly described on Exhibit “A” attached hereto (the “Property”). The Partnership proposes to construct and operate on the Property a 48-unit mixed-income, rental housing development to be known as “Robinson Overlook” (the “Development”). Forty-three (43) units (the “Affordable Dwelling Units”) will be rented to households that earn at or below 60 percent of Area Median Income of the Baltimore Metropolitan Statistical Area (“AMI”), of which eight (8) units will be rented to residents with disabilities who earn at or below 50 percent of AMI.

B. In order to fund a portion of the costs of the Development, the Partnership has applied to the Maryland Department of Housing and Community Development, either directly or through its Community Development Administration for (i) equity financing derived from Low Income Housing Tax Credits in the approximate amount of Twelve Million Nine Hundred Thirty-Four Thousand Four Hundred Sixty-Seven Dollars (\$12,934,467), and (ii) a Rental Housing Programs Fund loan in the approximate amount of One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000) (collectively, the “State Financing Programs”). Pursuant to the requirements of the State Financing Programs, the Development will provide housing for lower income persons.

C. The Partnership has requested that the County permit the Partnership to make payments in lieu of County real property taxes pursuant to Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (the “Act”). The Act provides, among other things, that real property may be exempt from County property tax if:

(1) the real property is owned by a person engaged in constructing or operating housing structures or projects;

(2) 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 in whole or in part, or provides interest subsidy, rent subsidy or rent supplements;

(3) the owner of the real property agrees to (A) continue to maintain the real property as rental housing for lower income persons under the requirements of the governmental

programs described in item (2) of this paragraph and agrees to renew any annual contributions or other agreements for rental subsidy or supplement or (B) enters into an agreement with the 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

(4) 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.

D. In order to induce the Partnership to provide housing for lower income persons, the County agrees to accept payments in lieu of County real property taxes, subject to the terms and conditions of this Agreement.

E. The County Council of Howard County, Maryland has approved this Agreement by resolution, a copy of which is attached hereto as Exhibit "B".

**NOW, THEREFORE**, in consideration of the premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Partnership and the County agree as follows:

1. Definitions. In this Agreement, the term:

(a) "Affordable Dwelling Unit" means a rental dwelling unit reserved for households that earn at or below 60 percent of AMI.

(b) "Distribution" means any withdrawal or taking of ~~cash~~ Surplus Cash or any assets of the Development, excluding payment for reasonable expenses incident to the operation and maintenance of the Development. Such expenses shall include a reasonable property management fee and a reasonable guaranteed distribution to the limited partner as an investor services fee.

(c) "Gross Rental Income" means the total of all charges paid by all tenants of the Property, less the cost of all utilities paid by the Partnership.

(d) "Initial Closing" means the date of the initial closing of the financing under the State Financing Programs.

(e) "Market Rate Dwelling Unit" means a rental dwelling unit which is not an Affordable Dwelling Unit.

(f) "Residual Receipts" means any cash remaining at the end of a calendar year after deducting from Surplus Cash:

(i) the Payment required by Section 5(b) of this Agreement; and

(ii) any Distributions to the General Partner, the aggregate of which do not exceed 10% of the Partnership's General Partner's initial equity investment in the Development, as determined by the County.

(g) "Surplus Cash" means any cash remaining at the end of a calendar year after the payment of:

(i) the Payment required by Section 5(a) of this Agreement;

~~(ii) all reasonable and actual operating costs and expenses of the Development including reasonable property management fees, reasonable asset management fees to the managing general partner, and a reasonable guaranteed distribution to the limited member as an investor services fee, as well as other taxes owed to the State of Maryland; and (ii) all reasonable and actual operating costs and expenses of the Development (whether paid as operating expenses or from available cash flow) including reasonable property management fees, reasonable asset management fees to the managing General Partner, any payments of deferred developer fee, amounts owed to the limited partner pursuant to the Partnership's partnership agreement, and a reasonable guaranteed distribution to the limited member as an investor services fee, as well as other taxes owed to the State of Maryland; and~~

~~(iii) all payments required under any mortgage on the Property approved by the County, including payments under the State Financing Programs. (iii) all payments required under any mortgage on the Property approved by the Maryland Department of Housing and Community Development, either directly or through its Community Development Administration or the County, including payments under the State Financing Programs.~~

2. Acceptance of Payments. For the term of this Agreement, the Partnership shall make, and the County shall accept, annual payments in lieu of all County real property taxes due on the Property (the "Payments"). The Property shall be exempt from County real property taxes in accordance with the Act so long as this Agreement is in effect.

3. Conditions Precedent. This Agreement shall not take effect unless and until each of the following conditions precedent have been fulfilled:

(a) Title. The Partnership shall have taken fee simple title to the Property;

(b) Financing. The Partnership shall have received financing under the State Financing Programs for construction of the Development; and

(c) PILOT Covenants. The Partnership shall have executed and recorded covenants on the Property, in a form acceptable to the County, that require the Partnership and all subsequent owners of the Property to offer for rent forty-three (43) units to households that earn at or below 60 percent of AMI, of which eight (8) units will be rented to residents with disabilities who earn at or below 50 percent of AMI, for a period of not fewer than forty (40) years from the date of Initial Closing (the "PILOT Covenants").

4. Effective Date. This Agreement shall take effect when each of the conditions precedent set forth in Section 3 are fulfilled (the “Effective Date”); provided, however, that if all of the conditions precedent are not fulfilled by January 9, 2020, this Agreement shall be null and void.

5. Amount of Payments. Each Payment made under this Agreement shall be in an amount calculated as follows:

(a) Minimum Payment. The Partnership shall pay to the County an amount equal to (i) Three Hundred Ten Dollars (\$310) for each Affordable Dwelling Unit and Market Rate Dwelling Unit of the Development, and (ii) the amount of County fire tax, front-foot benefit assessment charge, and the ad valorem charge (the “County Assessments”) paid by the Partnership for the Development for the current taxable year.

(b) Payment from Surplus Cash. To the extent funds are available from Surplus Cash, the Partnership shall pay to the County an additional two percent (2%) of the Development’s Gross Rental Income.

(c) Payment from Residual Receipts. To the extent funds are available from Residual Receipts, the Partnership shall pay to the County an amount which, when added to the Payments made under (a) and (b), equals (i) the County real property taxes which would have been paid for the current taxable year if the Development were not exempt from taxation, and (ii) the County Assessments paid by the Partnership for the Development for the current taxable year.

(d) Total Payment. The intention of this Agreement is that each Payment shall at no time exceed the aggregate of (i) County real property taxes which would have been paid for the current taxable year if the Development were not exempt from taxation, and (ii) the County Assessments paid by the Partnership for the Development for the current taxable year.

6. Time and Place Payments Due. Each Payment shall be made by May 1 of each year for the prior calendar year. Payments shall be made to the Director of Finance, 3430 Courthouse Drive, Ellicott City, Maryland 21043. Payments of the County Assessments shall be made at the time and in the manner provided by law.

7. Penalties for Late Payment. The Partnership shall be subject to the following penalties for late payments, which penalties shall not be imposed unless such payments remain outstanding after five (5) days’ written notice:

(a) 1% per month or part of a month during the period May 2 to June 30 following the due date; and

(b) 1 1/2% per month or part of a month on or after July 1 following the due date.

~~8. Penalties for Failure to Pay. At the option of the County, if any Payment is due and unpaid on or after July 1 following the due date, this Agreement may be terminated and all County~~



~~real property taxes for the preceding taxable year shall be immediately due and payable.~~ 8. Penalties for Late Payment. At the option of the County, if any Payment is due and unpaid on or after July 1 following the due date, this Agreement may be terminated by the County upon ninety (90) days' prior notice, which termination will be void if the Partnership pays the outstanding Payment within such ninety (90) day period. If the Partnership fails to pay the outstanding Payment within such ninety (90) day period, then this Agreement will terminate, and all County real property taxes for the preceding taxable year shall be immediately due and payable.

9. Reports and Records.

(a) By no later than March 31 of each year, the Partnership shall submit to the County's Director of Finance, in a form acceptable to the County, a report of the Development's income and expenses for the preceding calendar year, including an itemized breakdown of Gross Rental Income, Surplus Cash, and Residual Receipts.

(b) The Partnership shall submit such other reports as the County may reasonably require in order to verify the Partnership's compliance with this Agreement.

(c) The Partnership shall permit the County or any of its authorized agents to inspect the records of the Development in order to verify the Partnership's compliance with this Agreement.

10. Representation and Warranties.

(a) The Partnership represents and warrants to the County that it is eligible in all respects to enter in this Agreement to make payments in lieu of taxes under the Act.

(b) The Partnership covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

(c) The Partnership agrees that it shall remain in good standing with the State Department of Assessments and Taxation.

11. Term of Agreement. This Agreement shall remain in effect until the earlier to occur of:

(a) the termination of the PILOT Covenants;

(b) the foreclosure, or the making of a deed in lieu of foreclosure, of any portion of the Property, unless the party acquiring the Property agrees to continue the PILOT Covenants under terms and conditions acceptable to the County;

(c) any default under the PILOT Covenants which is not cured within a reasonable period after notice, which period shall in all events be at least thirty (30) days; or

(d) any default under this Agreement which is not cured within a reasonable period after notice.

12. Sale; Liens; Partnership Interests. During the term of this Agreement, the Partnership shall not, without the prior written consent of the County, make any transfer, exchange, encumber or otherwise convey its interest in the Property except as permitted by the State Financing Programs' documents. If the Partnership transfers the Property to a new owner (other than a holder of a mortgage or deed of trust in the event of foreclosure or deed in lieu of foreclosure), then the Partnership shall be permitted to assign this Agreement to the new owner, provided that (i) the transfer to the assignee was permitted by the State Financing Programs' documents and (ii) the assignee shall be subject to the terms and conditions of this Agreement.

13. State Taxes. The Partnership acknowledges and agrees that it shall pay all State real property taxes.

14. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, all successors and assigns of the Partnership.

15. Entire Agreement. This Agreement represents the entire understanding and agreement of the parties.

**[SIGNATURES BEGIN ON NEXT PAGE]**

IN WITNESS WHEREOF, the Partnership and the County, by their duly authorized representatives have signed this Agreement as of the date first written above.

WITNESS/ATTEST:

**ROBINSON OVERLOOK LIMITED PARTNERSHIP**, a Maryland limited partnership

By: Robinson Overlook GP, LLC, a Maryland limited liability company, its General Partner

By: Woda Cooper General Partner, LLC, an Ohio limited liability company, its Sole Member

By: Woda Cooper Communities, LLC, an Ohio limited liability company, its Sole Member

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_ (SEAL)  
Title: \_\_\_\_\_

[COUNTY SIGNATURES ON FOLLOWING PAGE]

**WITNESS/ATTEST:**

**HOWARD COUNTY, MARYLAND**

\_\_\_\_\_  
Name: Lonnie Robbins  
Title: Chief Administrative Officer

By: \_\_\_\_\_(SEAL)  
Name: Calvin Ball  
Title: County Executive

**APPROVED** for Form and Legal  
Sufficiency this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

**APPROVED** by Department of Finance

\_\_\_\_\_  
Gary Kuc  
County Solicitor

\_\_\_\_\_  
Janet Irvin  
Director

Reviewing Attorney:

\_\_\_\_\_  
Kristen Bowen Perry

**Exhibit A:** Legal Description of Property  
**Exhibit B:** Council Resolution No. \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

~~All that lot or parcel of land, situate and lying near Simpsonville, in the Fifth Election District of Howard County, State of Maryland, containing 6 acres 1 RD and 29 square perches of land. In Liber B.M. JR. 174 at folio 87.~~

~~Saving and Excepting 2.674 acres more or less conveyed by Deed to Maryland State Highway Administration as recorded in (book) 2804, (page) 4.~~

All that piece or parcel of land containing 3.8387 acres of land more or less as shown on plat entitled "Plat of Revision Baltimore Seventh Day Adventist Korean Church" and recorded among the Land Records for Howard County, Maryland on Plats numbered 23974 and 23975.

**EXHIBIT B**

Council Resolution No. \_\_\_\_\_