

County Council Of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 15

Resolution No. 145 -2021

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 Roslyn Rise Nine, LLC for property located at 10401 Twin Rivers Road, which will comprise a mixed-income, rental housing development to be known as one-half of Roslyn Rise Apartments, and finding that the Development meets the requirements of certain Special Affordable Housing Opportunities pursuant to the Adequate Public Facilities Act and may proceed subject to all other provisions of the Act despite being located in an area that is closed for development due to the projected enrollment in the school capacity chart.

Introduced and read first time _____, 2021.

By order _____
Michelle Harrod, Administrator

Read for a second time at a public hearing on _____, 2021.

By order _____
Michelle Harrod, Administrator

This Resolution was read the third time and was Adopted___, Adopted with amendments___, Failed___, Withdrawn___, by the County Council on _____, 2021.

Certified By _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2021

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**, Roslyn Rise Nine, LLC, a limited liability company organized and existing
2 under the laws of the State of Maryland (the “Company”), has contracted to develop certain real
3 property located at 10401 Twin Rivers Road in Columbia, Maryland (the “Property”); and
4

5 **WHEREAS**, the Company proposes to construct and operate on the Property a 59-unit
6 mixed-income, rental housing development to be known as one-half of “Roslyn Rise
7 Apartments” (the “Development”) with the following mix of units:

- 8 1. 45 units, the “Affordable Dwelling Units”, will be rented to households that earn at or
9 below 80 percent of Area Median Income of the Baltimore Metropolitan Statistical Area
10 (“AMI”), of which 31 units will be rented to residents who earn at or below 50 percent of
11 AMI; and
- 12 2. 14 units will be rented at market rates; and

13
14 **WHEREAS**, the Company has applied to the Maryland Department of Housing and
15 Community Development, either directly or through its Community Development
16 Administration for (i) equity financing derived from competitive 9% Low Income Housing Tax
17 Credits in the approximate amount of \$13,800,000 (collectively the “State Financing
18 Programs”); and
19

20 **WHEREAS**, pursuant to the State Financing Programs, the Development will provide
21 housing for lower income persons; and
22

23 **WHEREAS**, the Company will be the beneficiary of a Housing Assistance Payment
24 contract for 25 project-based vouchers used to subsidize the rent of 25 households; and
25

26 **WHEREAS**, the Company has requested that the County permit the Company to make
27 payments in lieu of County real property taxes (the “PILOT”) pursuant to Section 7-506.1 of the
28 Tax-Property Article of the Annotated Code of Maryland and in accordance with the Payment in
29 Lieu of Taxes Agreement, substantially in the form attached as Exhibit 1; and
30

1 **WHEREAS**, the Company has demonstrated to the County that an agreement for a PILOT
2 is necessary to make the Development economically feasible; and

3
4 **WHEREAS**, the Development has failed the School Capacity Test set forth in Section
5 16.1110(y) of the Adequate Public Facilities Act of Howard County (the “Act”); and

6
7 **WHEREAS**, the Company is requesting that the Howard County Department of Planning
8 and Zoning (“DPZ”) authorize the Development to proceed subject to the Special Affordable
9 Housing Opportunities provision set forth in Section 16.1103(e) of the Act; and

10
11 **WHEREAS**, pursuant to the Act, DPZ authorization requires that:

- 12 1. At least 40 percent of the units shall be affordable to households earning 60 percent or less
13 of the metropolitan statistical area median income;
- 14 2. The project or phase of a project is led by or in partnership with a local nonprofit or the
15 Housing Commission;
- 16 3. The project or phase of a project is seeking or has received an allocation of Low-Income
17 Housing Tax Credits or other state or federal financial assistance for affordable housing;
- 18 4. The project or phase of a project has obtained a letter of support from the County Executive;
19 and
- 20 5. The County Council and County Executive have approved either a Payment in Lieu of
21 Taxes agreement for the project or a resolution authorizing the project to proceed; and

22
23 **WHEREAS**, pursuant to Section 16.1103(e)(5) of the Act, the County Council shall hold
24 a public hearing and consider as part of its approval of a Payment in Lieu of Taxes agreement:

- 25 1. The capacity utilization at the school or schools impacted by the project and at adjacent
26 schools, including limiting the potential impact on any elementary or middle school with a
27 capacity utilization rate greater than 115 percent unless an adjacent school with the same
28 grade levels has a capacity utilization rate of 100 percent or less;
- 29 2. Estimated student generation from the project;
- 30 3. Any potential for the Board of Education to add capacity to the impacted school or schools
31 through redistricting, facility expansion, or other programs; and

1 4. The need for affordable housing in the County, including factors such as the housing cost
2 burden on families, the availability of housing for individuals with disabilities, and the
3 extent of homelessness among families and school children; and
4

5 **WHEREAS**, the County has evaluated and found that the Development meets the
6 requirements of the Special Affordable Housing Opportunities provision set forth in Section
7 16.1103(e)(1)-(e)(4) of the Act and the County Council has held a public hearing in accordance
8 with Section 16.1103(e)(5); and
9

10 **WHEREAS**, in accordance with Section 16.1103(e) of the Act, the Development may
11 proceed subject to all other provisions of the Act despite being located in an area that is closed
12 for development due to the projected enrollment in the school capacity chart.
13

14 **WHEREAS**, in order to induce the Company to provide affordable housing in Howard
15 County, it is in the interest of the County to accept a PILOT subject to the terms and conditions of
16 the Payment in Lieu of Taxes Agreement (the “Agreement”), substantially in the form attached to
17 this Resolution as “Exhibit 1”.
18

19 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
20 Maryland this ____ day of _____, 2021, that:

21 (1) The Development meets the requirements of the Special Affordable Housing Opportunities
22 provision set forth in Section 16.1103(e)(1)-(e)(4) of the Act and may proceed subject to all
23 other provisions of the Act despite being located in an area that is closed for development due
24 to the projected enrollment in the school capacity chart.

25 (2) In accordance with Section 7-506.1 of the Tax-Property Article of the Annotated Code of
26 Maryland, the County shall abate all County real property taxes for the Development subject
27 to the terms and conditions of the Payment in Lieu of Taxes Agreements (the “Agreement”)
28 attached to this Resolution as “Exhibit 1”.

29 (3) The County Executive is hereby authorized to execute and deliver the Agreements in the name
30 and on behalf of the County in substantially the forms attached.

1 (4) The County Executive, prior to execution and delivery of the Agreements, may make such
2 changes or modifications to the Agreements as he deems appropriate in order to accomplish
3 the purpose of the transactions authorized by this Resolution, provided that such changes or
4 modifications shall be within the scope of the transactions authorized by this Resolution; and
5 the execution of the Agreements by the County Executive shall be conclusive evidence of the
6 approval by the County Executive of all changes or modifications to the Agreements, and the
7 Agreements shall thereupon become binding upon the County in accordance with its terms.

EXHIBIT 1

Development: Roslyn Rise Nine, LLC

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this “Agreement”) is made as of this _____ day of _____, 20____, by and between Roslyn Rise Nine, LLC, a limited liability company organized and existing under the laws of the State of Maryland (the “Company”) and HOWARD COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (the “County”).

RECITALS

A. The Company has contracted to acquire certain real property located on 10401 Twin Rivers Road in Columbia, Maryland, which real property is more particularly described as set forth in the proposed description on Exhibit “A” attached hereto (the “Property”). The Company shall provide the updated legal description within five (5) business days upon recording of the final subdivision and receipt of the recording references. The Company proposes to construct and operate on the Property a 59-unit mixed-income, rental housing development to be known as one-half of “Roslyn Rise Apartments” (the “Development”). Forty-five (45) units (the “Affordable Dwelling Units”) will be rented to households that earn at or below 80 percent of Area Median Income of the Baltimore Metropolitan Statistical Area (“AMI”), of which thirty-one (31) units will be rented to residents who earn at or below 50 percent of AMI. An additional fourteen (14) units will be rented at market rates.

B. In order to fund a portion of the costs of the Development, the Company has applied to the Maryland Department of Housing and Community Development, either directly or through its Community Development Administration for equity financing derived from competitive 9% Low Income Housing Tax Credits in the approximate amount of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000) (the “State Financing Programs”). Pursuant to the requirements of the State Financing Programs, the Development will provide housing for lower income persons.

C. The Company will be the beneficiary of a Housing Assistance Payment (“HAP”) contract for 25 project-based vouchers used to subsidize the rent of 25 households.

D. The Company has requested that the County permit the Company 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 an entity 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 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; 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.

E. In order to induce the Company 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.

F. 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 Company 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 80 percent of AMI.

(b) "County Assessments" means any and all County assessments, charges, fees or non-real property taxes, including but not limited to the County fire tax, front foot benefit assessment charge, ad valorem charges, and any other charges that may appear on the Property's real property tax bill, for which the Company shall continue to be obligated for, and required to pay to the County in full.

(c) "Distribution" means any withdrawal or taking of 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 investor member(s) (or its affiliate) as an investor services fee.

(d) "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 Company.

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

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

(g) “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 any Distributions to the Managing Member, the aggregate of which do not exceed 10% of the Managing Member’s initial equity investment in the Development, as determined by the County.

(h) “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 (whether paid as operating expenses or from available cash flow) including reasonable property management fees, reasonable asset management fees to the managing member, any payments of deferred developer fee, amounts owed to the investor member(s) pursuant to the Company’s operating agreement, and a reasonable guaranteed distribution to the investor member(s) (or its affiliates) 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 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.

(iv) all payments required against any secondary debt or notes on the Property approved by the Maryland Department of Housing and Community Development.

2. Acceptance of Payments. For the term of this Agreement, the Company 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 Company shall have taken fee simple title to the Property;

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

(c) PILOT Covenants. The Company shall have executed and recorded covenants on the Property, in a form acceptable to the County, that require the Company and all subsequent owners of the Property to offer for rent forty-five (45) units to households that earn at or below 80 percent of AMI, of which thirty-one (31) units will be rented to residents 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 October 1, 2022, 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 Company shall pay to the County an amount equal to 4.5% of Gross Rental Income, less the amount of any County Assessments paid.

(b) Payment from Surplus Cash. To the extent funds are available from Surplus Cash, the Company 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 Company 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 Company for the Development for the current taxable year.

(d) Total Payment. The intention of this Agreement is that each annual 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 Company 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 Company 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 by the County upon ninety (90) days’ prior notice, which termination will be void if the Company pays the outstanding Payment within such ninety (90) day period. If the Company 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 Company 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 Company shall submit such other reports as the County may reasonably require in order to verify the Company's compliance with this Agreement.

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

10. Representation and Warranties.

(a) The Company 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 Company 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 Company 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 of this agreement;

(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, which period shall in all events be at least thirty (30) days.

12. Sale; Liens; Company Interests. During the term of this Agreement, the Company 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 Company transfers the Property to a new owner (subject to the terms in Section

11(b) above), then the Company 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 Company 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 Company.

15. Entire Agreement. This Agreement represents the entire understanding and agreement of the parties relating to the subject matter hereof.

[SIGNATURES BEGIN ON NEXT PAGE]

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

WITNESS/ATTEST:

ROSLYN RISE NINE, LLC

By:

Name: _____
Title: _____

Name: _____ (SEAL)
Title: _____

[COUNTY SIGNATURES ON FOLLOWING PAGE]

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____(SEAL)
Calvin Ball
County Executive

APPROVED for Form and Legal
Sufficiency this _____ day of
_____, 20__.

APPROVED by Department of Finance

Gary Kuc
County Solicitor

Rafiu Ighile
Director

Reviewing Attorney:

Kristen Bowen Perry
Deputy County Solicitor

Exhibit A: Legal Description of Property
Exhibit B: Council Resolution No. _____

EXHIBIT A

Description of
PROPOSED LOT 7
COLUMBIA, VILLAGE OF WILDE LAKE
SECTION 10 AREA 4
Tax ID. No. 15-009063

BEING a piece or parcel of land hereinafter described, situate, lying and being in the Fifth Election District of Howard County, Maryland, being part of the property conveyed to **Enterprise Community Homes Housing, LLC** by a deed dated December 21, 2017 and recorded among the Land Records of said County in **Liber 17980 at Folio 426** and shown on a plat intended to be recorded; said property further being part of Lot No. 2 as shown on a plat of subdivision entitled "**Columbia, Village of Wilde Lake, Amended, Section 10 Area 4**" and recorded among said Land Records in **Plat Book 15 Folio 87**, and being more particularly described, as now surveyed, in the Maryland State Plane Datum (NAD 83/2011):

BEGINNING for the same at a rebar and cap found at the northeasterly end of the South 18°10'53" West, 453.51 (**South 18°15'06" West, 453.94 feet, as now surveyed**) common line of Lot No. 1 and said Lot No. 2 as shown on the aforesaid Plat Book 15 Folio 87; said rebar and cap also lying on the westerly right-of-way line of Twin Rivers Road (variable width right-of-way) as shown in Plat Book 12 Folio 49; thence leaving said common line and binding with the outline of said Lot No. 2 and westerly right-of-way line the following three (3) courses and distances:

1. **South 46°36'26" East, 137.11** feet to a pipe found; thence
2. **South 01°36'26" East, 35.36** feet to a rebar and cap found; thence
3. **South 46°36'26" East, 41.32** feet to a point; thence leaving the aforesaid lot outline and running in, through over and across said Lot No. 2 for four (4) new lines of division
4. **South 42°24'51" West, 87.56** feet to a point of curvature; thence
5. **26.28 feet** along the arc of a tangential curve deflecting to the **left**, having a radius of **62.00** feet and a chord bearing and distance of **South 30°16'19" West, 26.08** feet to a point of tangency; thence
6. **South 18°07'46" West, 259.13** feet to a point; thence
7. **South 29°52'32" East, 101.31** feet to a point on the South 60°05'43" West, 489.63 foot common lot line of Lot No. 4 and said Lot No. 2, 103.86 feet northeasterly from a concrete monument found at the southwesterly end thereof; thence binding with the outline of Lot No. 2 the following four (4) courses and distances
8. **South 60°07'28" West, 103.86** feet to said concrete monument; thence
9. **South 89°53'12" West, 80.00** feet to a rebar and cap found; thence
10. **North 00°06'48" West, 200.00** feet to a concrete monument found; thence
11. **North 18°15'06" East, 453.94** feet to the point of beginning, containing **82,380 square feet**
12. or **1.8912 acres** of land.

EXHIBIT B

Council Resolution No. _____