

County Council Of Howard County, Maryland

2012 Legislative Session

Legislative Day No. 11

Resolution No. 138-2012

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 Colonial LLLP and Howard County, Maryland for a senior rental housing project known as Park View at Colonial Landing.

Introduced and read first time September 4, 2012

By order Stephen LeGendre  
Stephen LeGendre, Administrator

Read for a second time at a public hearing on September 18, 2012.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

This Resolution was read the third time and was Adopted , Adopted with amendments , Failed , Withdrawn , by the County Council on October 1, 2012.

Certified By Stephen LeGendre  
Stephen LeGendre, Administrator

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**, Colonial LLLP (the “Partnership”) proposes to acquire, renovate and  
2 operate a 100-unit senior rental development for low to moderate income households (serving  
3 households at 60% Baltimore Metropolitan Statistical Area Median Income or less) known as  
4 “Park View at Colonial Landing” and located on Rowanberry Drive in Elkridge, Howard  
5 County, Maryland (the “Project”); and  
6

7           **WHEREAS**, the Partnership has applied to the Community Development  
8 Administration, an agency of the Division of Finance of the Department of Housing and  
9 Community Development of the State of Maryland for (i) tax exempt bonds in the approximate  
10 amount of \$4,300,000, (ii) an assignment of approximately \$1,058,101 in State Loan Funds to  
11 Colonial LLLP, (iii) a Rental Housing Works loan in the approximate amount of \$250,000, and  
12 (iv) a 4% low-income housing tax credit reservation that will contribute equity in the  
13 approximate amount of \$1,628,000 (collectively, the “State financing”) to fund a portion of the  
14 acquisition and renovation costs of the Project; and  
15

16           **WHEREAS**, pursuant to the State financing programs, the Project will provide housing  
17 for senior low to moderate income persons; and  
18

19           **WHEREAS**, the Partnership has requested that the County permit the Partnership to  
20 make payments in lieu of taxes pursuant to Section 7-505 of the Tax-Property Article of the  
21 Annotated Code of Maryland; and  
22

23           **WHEREAS**, the Partnership has demonstrated to the County that an agreement for  
24 payments in lieu of taxes is necessary to make the Project economically feasible; and  
25

26           **WHEREAS**, in order to induce the Partnership to provide affordable housing in Howard  
27 County, it is in the interest of the County to accept payments in lieu of County real property  
28 taxes subject to the terms and conditions of the Payment in Lieu of Taxes Agreement attached to  
29 this Resolution as “Exhibit 1”.  
30

1           **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,  
2 Maryland this 15<sup>th</sup> day of October, 2012, that:

3 (1) In accordance with Section 7-505 of the Tax-Property Article of the Annotated Code of  
4 Maryland, the County shall accept payments in lieu of County real property taxes for the  
5 Park View at Colonial Landing senior rental housing project subject to the terms and  
6 conditions of the Payment in Lieu of Taxes Agreement attached to this Resolution as  
7 “Exhibit 1”.

8 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the  
9 name and on behalf of the County in substantially the form attached hereto as “Exhibit  
10 1”.

11 (3) The County Executive, prior to execution and delivery of the Agreement, may make such  
12 changes or modifications to the Agreement as he deems appropriate in order to  
13 accomplish the purpose of the transactions authorized by this Resolution, provided that  
14 such changes or modifications shall be within the scope of the transactions authorized by  
15 this Resolution; and the execution of the Agreement by the County Executive shall be  
16 conclusive evidence of the approval by the County Executive of all changes or  
17 modifications to the Agreement, and the Agreement shall thereupon become binding  
18 upon the County in accordance with its terms.



## **PAYMENT IN LIEU OF TAXES AGREEMENT**

**THIS AGREEMENT** (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **COLONIAL LLLP**, a limited liability 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 and renovate certain real property located on Rowanberry Drive in Elkridge, Howard County, Maryland, which real property is more particularly described on Exhibit "A" attached hereto (the "Property"). The Partnership proposes to renovate and operate on the Property an existing 100-unit senior rental housing project, to be known as "Park View at Colonial Landing" (the "Project").

B. The Partnership has applied to the Community Development Administration, an agency of the Division of Finance of the Department of Housing and Community Development of the State of Maryland ("DHCD") for (1) tax exempt bonds in the approximate amount of Four Million Three Hundred Thousand Dollars (\$4,300,000) (the "Bond Loan"), (2) an assignment of approximately \$1,058,101 in State Loan Funds to Columbia LLLP, (the "State Loan Funds"), (3) a Rental Housing Works loan in the approximate amount of Two Hundred Fifty Thousand (\$250,000), and (4) an allocation of 4% Low Income Housing Tax Credits ("LIHTC") that will contribute equity in the approximate amount of One Million Six Hundred Twenty Eight Thousand Dollars (\$1,628,000) (collectively, the "State Financing") to fund a portion of the acquisition and renovation costs of the Project. Under the State program, the Project will provide housing for low to moderate income persons. Also, under the government program and this Agreement the Project will operate on a limited distribution basis.

C. The Partnership has requested that the County permit the Partnership to make payments in lieu of County real property taxes pursuant to Section 7-505 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 or leased 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 under a federal, State, or local government program that funds construction;

(3) the structures and facilities of the real property are governmentally-controlled as to rents, charges, rates of return, and methods of operation so that the real property operates on a

nonprofit or limited distribution basis; 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 low and moderate 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) "Distribution" means any withdrawal or taking of cash or any assets of the Project, excluding payment for reasonable expenses incident to the operation and maintenance of the Project. Such expenses shall include a reasonable property management fee and a reasonable guaranteed distribution to the limited partner as an investor services fee.

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

(c) "Household of Low Income" means a household whose annual income meets the requirements of the federal Low Income Housing Tax Credit program, 26 USC 42(g)(1)(B), which requires, among other things, that the initial annual income of an eligible household is sixty percent (60%) or less of the median income as set from time to time by the United States Department of Housing and Urban Development for Section 8 Programs in the Baltimore Metropolitan Statistical Area.

(d) "Initial Closing" means the date of the initial closing of the DHCD Loans.

(e) "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, the aggregate of which do not exceed 10% of the Partnership's initial equity investment in the Project, as determined by the County.

(f) "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 Project including reasonable property management fees, any portion of a deferred developer fee as

permitted under the Bond Loan and State Loan Funds, and a reasonable guaranteed distribution to the limited partner as an investor services fee; and

(iii) all payments required under any mortgage on the Property approved by the County, including payments under the Bond Loan and the State Loan Funds.

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 and/or leasehold title to the Property;

(b) Financing. The Partnership shall have received the DHCD Financing for the acquisition and renovation of the Project; and

(c) Low Income 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 not less than one hundred (100) of the rental units in the Project to Households of Low Income for a period of not less than forty-one (41) years from the date of Initial Closing (the "Low Income 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 1, 2013, 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) two percent (2%) of the Project's Gross Rental Income for the preceding calendar year, less (ii) the amount of County fire tax, front-foot benefit assessment charge, ad valorem charge, and, if applicable, Middle Patuxent Drainage Area Supplemental Ad Valorem Charge (the "County Assessments") paid by the Borrower for the Project 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 six percent (6%) of the Project'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 Project were not exempt from taxation, plus (ii) the County Assessments paid by the Partnership for the Project 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 Project were not exempt from taxation, plus (ii) the County Assessments paid by the Partnership for the Project 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:

(a) 1% per month or part of a month during the period April 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.

9. Reports and Records.

(a) By no later than March 31 of each year, the Partnership shall submit to the County, in a form acceptable to the County, a report of the Project'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 Project in order to verify the Partnership's compliance with this Agreement.

10. Representations 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.

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

(a) the repayment of all principal and interest due under the Bond Loan;

(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 Low Income Covenants under terms and conditions acceptable to the County;

(c) any default under the Low Income Covenants which is not cured within a reasonable period after notice; 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:

(a) sell or transfer any portion of the Property;

(b) permit any liens or encumbrances against the Property except as required by the financings described in this Agreement; or

(c) Permit any general partner to sell, assign or otherwise transfer any partnership interest in the Partnership, other than the initial sale of limited partnership interests for tax credit purposes.

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 appear on the 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:

COLONIAL, LLLP

By: Colonial Development LLLP, General Partner  
By: Shelter Development, LLC, Managing

General Partner

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
David D. Carliner  
Senior Vice President

ATTEST:

HOWARD COUNTY, MARYLAND

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (SEAL)

Lonnie Robbins  
Chief Administrative Officer

By:  
Ken Ulman  
County Executive

APPROVED for Form and Legal  
Sufficiency: this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012.

APPROVED by Department of Finance:

\_\_\_\_\_  
Margaret Ann Nolan  
County Solicitor

\_\_\_\_\_  
Stanley Mileski, Director

**Exhibit A:** Property Description

**Exhibit B:** Council Resolution No. \_\_\_\_-2012

## EXHIBIT A

**BEGINNING FOR THE SAME** at a 1¼ inch diameter iron pipe found at a point at the end of the Eighth or North 28 degrees 00 minutes 54 seconds West 394.09 foot line of the First Parcel of a deed dated March 10, 1986 which was conveyed by Charlotte Dubin, Personal Representative of the Estate of Theodore Dubin, deceased, to Charlotte Dubin, Marc L. Dubin and Nancy D. Levine and recorded among the Land Records of Howard County, Maryland in Liber No. 1494 at Folio 374; and leaving said Eighth deed line and running within the aforesaid First Parcel recorded in Liber No. 1494 at Folio 374, as now surveyed, referring to the Maryland State Grid, the four (4) following courses and distances, viz: (1) North 75 degrees 11minutes 10 seconds East 77.15 feet, (2) 25.93 feet along the arc of a curve to the right having a radius of 573.00 feet and subtended by the Chord: North 06 degrees 36 minutes 21 seconds West 25.92 feet, (3) North 75 degrees 25 minutes 45 seconds East 299.75 feet, (4) North 82 degrees 03 minutes 04 seconds East 204.00 feet to a point on the Twenty-Fourth or South 13 degrees 28 minutes 36 seconds East 264.49 foot line of the aforesaid First Parcel recorded in Liber No. 1494 at folio 374; said point being 158.49 feet southeasterly from an iron pipe found at the beginning of said Twenty-Fourth deed line, and running thence intending to bind along part of the said Twenty-Fourth deed line and also along a part of the Twenty-Fifth deed line of said deed, (5) South 22 degrees 20 minutes 00 seconds East 106.00 feet, (6) South 23 degrees 35 minutes 12 seconds East 67.04 feet and leaving said Twenty-Fifth deed line and running within the aforesaid First Parcel recorded in Liber No. 1494 and Folio 374, (7) South 52 degrees 19 minutes 22 seconds West 284.32 feet to a 1-inch diameter iron pipe found at the end of the Third or North 61 degrees 14 minutes 07 seconds East 79.55 foot line of the aforesaid First Parcel recorded in Liber No. 1494 at Folio 374; said point also being at the end of the Fourth or North 59 degrees 46 minutes East 140.76 foot line of a deed dated February 26, 1982 which was conveyed by Dorothy Marie Neal to Dorothy Marie Neal and recorded among the aforesaid Land Records in Liber No. 1091 at Folio 746 and running thence binding or intending to bind reversely along all of the said Third deed line of the First Parcel recorded in Liber No. 1494 at Folio 374 and reversely along all of the Fourth or North 59 degrees 46 minutes East 140.76 foot line of the aforesaid deed recorded in Liber 1091 at Folio 746, (8) South 52 degrees 19 minutes 22 seconds West 140.63 feet to a point at the beginning of the South 61 degrees 14 minutes 07 seconds West 73.79 foot line of the aforesaid First Parcel of said Deed recorded in Liber No. 1494 at Folio 374 and running thence binding along all of said seventh deed line, (9) South 52 degrees 19 minutes 22 seconds West 73.79 feet to a point on the hereinabove mentioned Eighth deed line of the aforesaid First Parcel of said deed recorded in Liber No. 1494 at Folio 374, and binding along part of said Eighth deed line, (10) North 36 degrees 50 minutes 08 seconds West 393.86 feet to the point of beginning. **Containing 3.630 acres of land, more or less, as surveyed and described by Fisher, Collins & Carter, Inc. dated May 21, 1995.**

**SAVING AND EXCEPTING** from the above described property so much of said property as was heretofore conveyed by Deed and Release dated May 5, 1998 and recorded among the Land Records of Howard County, Maryland in Liber No. 4293, folio 206 by and between the Howard County Housing Commission, Elkrige Apartments Limited Partnership, A. David Horsman and Jeffrey A. Welch, Substitute Trustees for Crestar Bank, Grace Episcopal Church of the Elkrige Land and Howard County, Maryland.

The above property being further shown on Plat entitled "PARCEL "A" ELKRIDGE ELDERLY", which Plat is recorded among the Plat Records of Howard County, Maryland at Plat No. 11821

**Exhibit B**

**County Council Of Howard County, Maryland**

2012 Legislative Session

Legislative Day No. \_\_\_\_\_

**Resolution No. \_\_\_\_\_-2012**

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 Colonial LLLP and Howard County, Maryland for a senior rental housing project known as Park View at Colonial Landing.

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Introduced and read first time \_\_\_\_\_, 2012

By order \_\_\_\_\_

Stephen LeGendre, Administrator

Read for a second time at a public hearing on \_\_\_\_\_, 2012.

By order \_\_\_\_\_

Stephen LeGendre, Administrator

This Resolution was read the third time and was Adopted \_\_, Adopted with amendments \_\_, Failed \_\_, Withdrawn \_\_, by the County Council on \_\_\_\_\_, 2012.

Certified By \_\_\_\_\_

Stephen LeGendre, Administrator

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

**WHEREAS**, Colonial LLLP (the “Partnership”) proposes to acquire, renovate and operate a 100-unit senior rental development for low to moderate income households (serving households at 60% Baltimore Metropolitan Statistical Area Median Income or less) known as “Park View at Colonial Landing” and located on Rowanberry Drive in Elkridge, Howard County, Maryland (the “Project”); and

**WHEREAS**, the Partnership has applied to the Community Development Administration, an agency of the Division of Finance of the Department of Housing and Community Development of the State of Maryland for (i) tax exempt bonds in the approximate amount of \$4,300,000, (ii) an assignment of approximately \$1,058,101 in State Loan Funds to Colonial LLLP, (iii) a Rental Housing Works loan in the approximate amount of \$250,000, and (iv) a 4% low-income housing tax credit reservation that will contribute equity in the approximate amount of \$1,628,000 (collectively, the “State financing”) to fund a portion of the acquisition and renovation costs of the Project; and

**WHEREAS**, pursuant to the State financing programs, the Project will provide housing for senior low to moderate income persons; and

**WHEREAS**, the Partnership has requested that the County permit the Partnership to make payments in lieu of taxes pursuant to Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland; and

**WHEREAS**, the Partnership has demonstrated to the County that an agreement for payments in lieu of taxes is necessary to make the Project economically feasible; and

**WHEREAS**, in order to induce the Partnership to provide affordable housing in Howard County, it is in the interest of the County to accept payments in lieu of County real property taxes subject to the terms and conditions of the Payment in Lieu of Taxes Agreement attached to this Resolution as “Exhibit 1”.

**NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County, Maryland this \_\_\_\_ day of \_\_\_\_\_, 2012, that:

- (1) In accordance with Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland, the County shall accept payments in lieu of County real property taxes for the Park View at Colonial Landing senior rental housing project subject to the terms and conditions of the Payment in Lieu of Taxes Agreement attached to this Resolution as “Exhibit 1”.
- (2) 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 hereto as “Exhibit 1”.
- (3) 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.

