

County Council of Howard County, Maryland

2023 Legislative Session

Legislative Day No. **13**

Resolution No. 184 -2023

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 Waverly Winds Four, LLC for property located at 5501-5627 Cedar Lane, which will comprise a mixed-income, rental housing development to be known as Building B of Waverly Winds Apartments.

Introduced and read first time _____, 2023.

By order _____
Michelle Harrod, Administrator

Read for a second time at a public hearing on _____, 2023.

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This Resolution was read the third time and was Adopted __, Adopted with amendments __, Failed __, Withdrawn __, by the County Council on _____, 2023.

Certified By _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2023

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**, Waverly Winds Four, LLC, a limited liability company organized and
2 existing under the laws of the State of Maryland (the “Company”), has contracted to develop
3 certain real property located at 5501-5627 Cedar Lane in Columbia, Maryland (the “Property”);
4 and

5
6 **WHEREAS**, the Company proposes to construct and operate on the Property a 68-unit
7 mixed-income, rental housing development to be known as Building B of Waverly Winds
8 Apartments (the “Development”) with the following mix of units:

- 9 1. 46 units, the “Affordable Dwelling Units”, will be rented to households that earn at or
10 below 80 percent of Area Median Income of the Baltimore Metropolitan Statistical Area
11 (“AMI”), of which 15 units will be rented to residents who earn at or below 50 percent of
12 AMI; and
- 13 2. 22 units will be rented at market rates; and

14
15 **WHEREAS**, the Company has applied to the Maryland Department of Housing and
16 Community Development, either directly or through its Community Development
17 Administration for equity financing derived from competitive 4% Low Income Housing Tax
18 Credits in the approximate amount of \$7,926,793 (collectively the “State Financing Programs”);
19 and

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

23
24 **WHEREAS**, the Company will be the beneficiary of a Housing Assistance Payment
25 contract for 14 project-based vouchers used to subsidize the rent of 14 households; and

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

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

8
9 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
10 Maryland this ____ day of _____, 2023, that:

- 11 (1) In accordance with Section 7-506.1 of the Tax-Property Article of the Annotated Code of
12 Maryland, the County shall abate all County real property taxes for the Development subject
13 to the terms and conditions of the Payment in Lieu of Taxes Agreement (the “Agreement”)
14 attached to this Resolution as “Exhibit 1”.
- 15 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the name
16 and on behalf of the County in substantially the forms attached.
- 17 (3) The County Executive, prior to execution and delivery of the Agreement, may make such
18 changes or modifications to the Agreement as he deems appropriate in order to accomplish the
19 purpose of the transactions authorized by this Resolution, provided that such changes or
20 modifications shall be within the scope of the transactions authorized by this Resolution; and
21 the execution of the Agreement by the County Executive shall be conclusive evidence of the
22 approval by the County Executive of all changes or modifications to the Agreements, and the
23 Agreement shall thereupon become binding upon the County in accordance with its terms.

EXHIBIT 1

Development: Waverly Winds
Four, LLC

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of this ___ day of _____; 20___, by and between Waverly Winds Four, 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 5501-5627 Cedar Lane 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 proposes to construct and operate on the Property a 68-unit mixed-income, rental housing development to be known as Building B of "Waverly Winds Apartments" (the "Development"). Forty-six(46) 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 fifteen (15) units will be rented to residents who earn at or below 50 percent of AMI. An additional twenty-two (22) 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 4% Low Income Housing Tax Credits in the approximate amount of Seven Million Nine Hundred Twenty-Six Thousand Seven Hundred Ninety Three Dollars (\$7,926,793) (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 14 project-based vouchers used to subsidize the rent of 14 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-six (46) units to households that earn at or below 80 percent of AMI, of which fifteen (15) 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 December 31, 2025, 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 (i) Three Hundred Dollars \$300 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, the ad valorem charges, and any other charges that may appear on the Property's real property tax bill (the "County Assessments") paid by the Company for the Development for the current taxable year.

(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 comply with Federal, State and County laws.

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

(cl) 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 ll(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:

WAVERLY WINDS FOUR, LLC

By:

Name:.....
Title:.....

_____(SEAL)
Name:.....
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

APPROVED by Department of Finance

Sufficiency this ___ day of
_____, 20__.

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

BEING KNOWN AND DESIGNATED as Lot 3A (containing 3.707 ac, more or less), shown and set forth on, "Plat of Resubdivision Columbia Village of Harpers Choice Section 3, Area 4, Lot 3A & Section 4, Area 2, Open Space Lot 2A' as the same is recorded among the Plat Records of Howard County, Maryland as Plat No. _____.

EXHIBIT B

Council Resolution No. ...