

County Council of Howard County, Maryland

2025 Legislative Session

Legislative Day No. 14

Resolution No. 184 -2025

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

Short Title: Payment in Lieu of Taxes Agreement – Orchard Club LLLP – Orchard Club Apartments

Title: A RESOLUTION approving the terms and conditions of a Payment in Lieu of Taxes Agreement and extension request by and between the Howard County, Maryland and Orchard Club, LLLP for an existing 196-unit housing community located at 6330 Orchard Club Drive, Elkridge, Maryland, which has served mixed income residents since 1991.

Introduced and read first time _____, 2025.

By order _____
Michelle Harrod, Administrator

Read for a second time at a public hearing on _____, 2025.

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 _____, 2025.

Certified By _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2025

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**, Orchard Club Apartments (the “Project”) is an existing 196-unit housing
2 community that has served low-income and moderate-income residents since 1991; and
3

4 **WHEREAS**, on February 27, 1991, Orchard Club, LLLP, (formally Orchard Club Limited
5 Partnership), entered into a Payment in lieu of Taxes (PILOT) agreement with Howard County
6 and a 40-year Extended Use Agreement (EUA) with the Maryland Department of Housing and
7 Community Development (DHCD); and
8

9 **WHEREAS**, the PILOT and EUA require the Owner to offer for rent not less than 25% of
10 the units in the Project to low-income households; and
11

12 **WHEREAS**, under the PILOT Agreement, the Developer is required to make a minimum
13 payment of 4% of gross rental income; and
14

15 **WHEREAS**, the Company has operated the Development continuously since construction
16 completion as a mixed income rental housing development, which includes 196 general occupancy
17 units where 99 affordable dwelling units have been rented to households that earn at or below 80%
18 of Area Median Income of the HUD Baltimore-Columbia-Towson, MD Metropolitan Statistical
19 Area (“HUD Baltimore MSA”), of which 49 units are rented to Households of Low Income who
20 earn at or below 50% of the HUD Baltimore MSA, and an additional 97 units are rented as Market
21 Rate Dwelling Units; and
22

23 **WHEREAS**, when the Project was refinanced in 2005, the loan to the County was paid off
24 and the term of the PILOT agreement was extended for 20 years; and
25

26 **WHEREAS**, the PILOT agreement is set to expire in November 2025 and the current EUA
27 agreement with DHCD is set to expire in 2031; and
28

29 **WHEREAS**, if the County agrees to the 15-year extension, the Owner will continue to
30 lease 25% of the units to low income households earning up to 50% HUD Baltimore MSA income
31 limits, to lease 25% of the units to moderate income households earning up to 80% HUD Baltimore

1 MSA income limits, and the Owner will request an extension of the EUA through 2040 to match
2 the request for a PILOT extension; and
3

4 **WHEREAS**, the Company has requested that the County permit the Company to continue
5 to make payments in lieu of County real property taxes (the “PILOT”) pursuant to Section 7-506.1
6 of the Tax-Property Article of the Annotated Code of Maryland and in accordance with the
7 Payment in Lieu of Taxes Agreement, substantially in the form attached as Exhibit 1; and
8

9 **WHEREAS**, the Company has demonstrated to the County that an agreement for a PILOT
10 is necessary to continue to make the Development economically feasible; and
11

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

17 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
18 Maryland this ____ day of _____, 2025, that:

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

EXHIBIT 1

Development: Orchard Club Apartments_____

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this “Agreement”) is made as of this_____ day of_____, 2025, by and between ORCHARD CLUB, LLLP, a limited liability partnership 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 built the Orchard Club Apartments in 1991, which is located at 6330 Orchard Club Drive, Elkridge, MD 21075 as a Low Income Housing Tax Credit (LIHTC) project using tax exempt bonds from the Maryland Community Development Administration, as well as Department of Housing and Community Development of the State of Maryland Rental Housing Production funds and a loan from Howard County’s Rental Housing Development Program (all of these original loans have been paid in full) , which real property is more particularly described as set forth in the proposed description on Exhibit “A” attached hereto (the “Property”). The Company has operated the Orchard Club Apartments (the “Development”) continuously since construction completion as a mixed income rental housing development, which includes 196 general occupancy units. There are 99 units (the “Affordable Dwelling Units”) rented to Households of Moderate Income that earn at or below 80 percent of Area Median Income of the HUD Baltimore-Columbia-Towson, MD Metropolitan Statistical Area (“HUD Baltimore MSA”), of which 49 units are rented to Households of Low Income who earn at or below 50 percent of the HUD Baltimore MSA. An additional 97 units are rented as Market Rate Dwelling Units.

B. The Company and the County entered into a Payment In Lieu of Taxes Agreement on February 27, 1991, and any amendments thereto (the “Initial Agreement”), which permitted 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.

C. In order to induce the Company to continue to provide housing for lower income persons upon the expiration of the Initial Agreement, the County agrees to accept payments in lieu of County real property taxes, subject to the terms and conditions of this Agreement.

D. 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 the HUD Baltimore MSA.

(b) "Household of Low Income" means a household whose annual income is less than fifty percent (50%) of the median income as set annually by the United States Department of Housing and Urban Development for the HUD Baltimore MSA.

(c) "Household of Moderate Income" means a household whose annual income is less than eighty percent (80%) of the median income as set annually by the United States Department of Housing and Urban Development for the HUD Baltimore MSA.

(d) "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.

(e) "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.

(f) "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.

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

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

(i) “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;

(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; and

(iv) all payments required against any secondary debt or notes on the Property.

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) 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 ninety-nine (99) units to households that earn at or below 80 percent of HUD Baltimore MSA, of which forty-nine (49) units will be rented to residents who earn at or below 50 percent of HUD Baltimore MSA, for a period of fifteen (15) years from the date of this Agreement.

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 March 31, 2026, 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 Four percent (4%) of the Gross Rental Income as defined in 1.(d) 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) 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.

(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 Property were not exempt from taxation, plus (ii) the County Assessments paid by the Company for the Property 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:

ORCHARD CLUB, LLLP

By: Elkridge Partners, LLC
General Partner

_____ (SEAL)

Name: _____

Name: L. Scott Armiger

Title: _____
Corporation, Authorized Person

Title: President, Orchard Development

[COUNTY SIGNATURES ON FOLLOWING PAGE]

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

Brandee Ganz
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

All that lot of ground situated in the _____ Election District of Howard County, Maryland and being more particularly described as follows:

BEING KNOWN AND DESIGNATED as Lot No. _____

EXHIBIT B

Council Resolution No. _____