

County Council Of Howard County, Maryland

2008 Legislative Session

Legislative Day No. **5**

Resolution No. 23 -2009

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 HCH Partners, II, LLC, and Howard County, Maryland for a multi-family rental housing project known as Guilford Gardens.

Introduced and read first time _____, 2008.

By order _____
Stephen LeGendre, Administrator

Read for a second time at a public hearing on _____, 2008.

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 _____, 2009.

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

1 **WHEREAS**, the County has leased to the Howard County Housing Commission (the
2 “Commission”) certain real property located on Oakland Mills Road in Columbia, Howard
3 County, Maryland, which contains a 100-unit residential development for low and moderate
4 income households known as “Guilford Gardens” (the “Project”); and
5

6 **WHEREAS**, pursuant to the lease and the Commission’s Articles of Organization, the
7 Project will provide housing for low or moderate income persons and will operate on a non-
8 profit basis; and
9

10 **WHEREAS**, the Commission intends assign the lease to HCH Partners II, LLC (the
11 “Company”), of which the Commission will be the managing member, and redevelop the Project
12 into a 269-unit, mixed income multi-family housing development using financing from the
13 Maryland Department of Housing and Community Development (“DHCD”); and
14

15 **WHEREAS**, in order to make the Project affordable, the Company has requested that the
16 County abate all County real property taxes pursuant to Section 7-505 of the Tax-Property
17 Article of the Annotated Code of Maryland; and
18

19 **WHEREAS**, in order to promote housing for low and moderate income persons, the
20 County agrees to abate all County real property taxes, subject to the terms and conditions of this
21 Agreement attached to this Resolution as “Exhibit 1”.
22

23 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
24 Maryland this ____ day of _____, 2009, that:

25 (1) In accordance with Section 7-505 of the Tax-Property Article of the Annotated Code of
26 Maryland, the County shall abate all County real property taxes for the Guilford Gardens
27 rental housing project subject to the terms and conditions of the Payment in Lieu of
28 Taxes Agreement attached to this Resolution as “Exhibit 1”.

29 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the
30 name and on behalf of the County in substantially the form attached hereto as “Exhibit
31 1”.

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

Project: **Guilford Gardens**

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2009, by and between the **HCH PARTNERS II, LLC**, a Maryland limited liability Company (the "Company") and **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the "County").

RECITALS

A. Pursuant to a certain Ground Lease dated November 1, 2008 and recorded among the Land Records of Howard County at Liber 11390, folio 656 and re-recorded in Liber 11403, Folio 078 (the "Ground Lease"), the County leased to the Commission certain real property located on Oakland Mills Road in Columbia, Howard County, Maryland, which real property is more particularly described on Exhibit "A" attached hereto (the "Property"). The Property contains a 100-unit residential development for low and moderate income households known as "Guilford Gardens." The Commission proposes to assign the Ground Lease to the Company, of which the Commission is the managing member. The Company proposes to demolish the existing development and construct and operate on the Property a 269-unit, multi-family, mixed-income housing development (the "Development").

B. The Company has applied to the Department of Housing and Community Development of the State of Maryland ("DHCD") for a Partnership Rental Housing Program ("PRHP") loan in the approximate amount of \$3,625,000 (the "PHRP Loan"), and to the Community Development Administration of the State of Maryland ("CDA") for Low Income Housing Tax Credits ("LIHTC") in the approximate amount of \$8,900,000 (the "LIHTC Equity") to fund a portion of the construction costs of the Project. Under the State programs, the Project will provide housing for low and moderate income persons. Also, under the government programs and this Agreement the Project will operate on a limited distribution basis.

C. The Company has requested that the County abate all 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 Company to provide housing for low and moderate income persons, the County agrees to abate all 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 Company and the County agree as follows:

1. Definitions. In this Agreement the term:

(a) "Household of LIHTC 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.

(b) "Initial Closing" means the date of the initial closing of the PRHP Loan and LIHTC Equity.

2. Abatement of County Property Taxes. (a) Beginning on the date of Initial Closing, and for the term of this Agreement, all County property taxes for the Property shall be abated. To the extent the Company has paid any such taxes, the County shall rebate to the Company such amounts paid. The Property shall be exempt from County real property taxes in accordance with the Act so long as this Agreement is in effect.

(b) The Commission shall pay to the County the full amount of any State real property taxes and County fire tax, front-foot benefit assessment charges, and ad valorem charges due on the Property.

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 and/or leasehold title to the Property;

(b) Financing. The Company shall have received the PRHP Loan and the LIHTC Equity for the construction of the Project; and

(c) LIHTC Low Income 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 not less than one hundred sixteen (116) of the rental units in the Project to Households of LIHTC Low Income for a period of not less than forty-three (43) years from the date of Initial Closing (the "LIHTC 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 December 31, 2009, this Agreement shall be null and void.

5. Reports and Records.

(a) By no later than March 31 of each year, the Company 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.

(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 Project in order to verify the Company's compliance with this Agreement.

6. Representations and Warranties.

(a) The Company represents and warrants to the County that it is eligible in all respects to enter into 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.

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

- (a) forty-three (43) years following the Effective Date;
- (b) the repayment of all principal and interest due under the PRHP Loan;
- (c) the foreclosure, or the making of a deed in lieu of foreclosure, of any portion of the Property;
- (d) any default under the LIHTC Low Income Covenants; or
- (e) any default under this Agreement.

8. Sale; Liens; Company Interests. During the term of this Agreement, the Company 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 or managing member to sell, assign or otherwise transfer any interest in the Company, other than the initial sale of limited interests for tax credit purposes.

9. State Taxes. The Company acknowledges and agrees that it shall pay all State real property taxes.

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

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

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:

HCH PARTNERS II, LLC

By: Howard County Housing Commission
its Managing Member

Stacy L. Spann
Secretary

By: _____(SEAL)
David E. Raderman
Chairman

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____
Ken Ulman
County Executive

APPROVED for Form and Legal
Sufficiency: this _____ day
of _____, 2009.

APPROVED by Department of Finance:

Margaret Ann Nolan

Sharon F. Greisz, Director

County Solicitor

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2009, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **David E. Raderman, Chairman** of the Howard County Housing Commission, Managing Member of HCH Partners II, LLC., and he acknowledged that he executed the foregoing Agreement for the purposes therein contained, and he further acknowledged the same to be the act of the HCH Partners II, LLC.

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2009, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **Ken Ulman, the County Executive** of Howard County, Maryland, and he acknowledged that he executed the foregoing Agreement for the purposes therein contained, and further acknowledged the same to be the act of Howard County, Maryland.

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

I CERTIFY THAT:

- (a) I am an attorney admitted to practice before the Court of Appeals of Maryland; and
- (b) I prepared the foregoing Payment in Lieu of Taxes Agreement.

Constance A. Tucker

Exhibit A: Property Description

Exhibit B: Council Resolution No. _____

EXHIBIT A
Land Description

ALL that piece or parcel of ground identified as Tax Map 42, Parcel 361, and situate and lying in the Sixth Election District of said Howard County and said state which by a survey made by Clarke, Finefrock and Sackett, Registered Professional Engineers and Land Surveys, dated March 21, 1978, is more particularly described and referred to as follows, that is to say,

BEING all of the land conveyed from Thelma L. Collins, widow, to Pattison E. Whipps, Incorporated, as to an undivided one-half interest, by deed dated July 19, 1967, and recorded among the Land Records of Howard County, Maryland, in Liber 472 at Folio 23 and being more particularly described as follows:

BEGINNING for the same at a point at the beginning of the First or North 05°40' East, 900.00 foot line as described in the aforesaid deed, the said point also being 15.00 feet easterly of the centerline of Oakland Mills Road formerly known as Guilford Road, 30.00 feet wide, and running thence with and along the said First line and also running 15.00 feet from and parallel with the said centerline, in the meridian of the Maryland State Plane Coordinate System, to wit,

1) North 00°15'16" East, 900.00 feet to a point at the beginning of the Second or South 78°08' East, 977.31 foot line, as described in the aforesaid deed, and running thence with and along the said Second line,

2) South 83°45'36" East, 971.18 feet to a point at the beginning of the Third or South 08°42' West, 800.00 foot line, as described in the aforesaid deed, and running thence with and along the said Third line and also with and along an existing fence on line,

3) South 02°59'52" West, 800.00 feet to an iron pipe found at the beginning of the Fourth or North 84°04' West, 929.26 foot line as described in the aforesaid deed, passing in transit an iron pipe found on line at the end of 0.83 foot and running thence with and along the said Fourth line, and also with and along an existing fence on line,

4) North 89°43'25" West, 927.59 feet to the point of beginning, passing in transit an iron pipe found on line at the end of 922.67; containing 805.266 square feet or 18.4864 acres of land.

SUBJECT HOWEVER, to any and all easements and/or rights-of-way of record.

TOGETHER with the buildings and improvements thereon erected, made or being all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or otherwise appertaining.