

1 **..Title**

2 **Payment in Lieu of Property Taxes – Towne Courts, LLC** - For the purpose of approving a  
3 Payment in Lieu of Taxes Agreement between the City of Annapolis and Towne Courts, LLC, for  
4 construction of affordable housing units in Annapolis, Maryland.

5 **..Body**

6 **CITY COUNCIL OF THE**

7 *City of Annapolis*

8  
9 **Resolution 39-19**

10  
11 **Introduced by: Mayor Buckley**

12  
13 **Referred to**

14  
15 **A RESOLUTION** concerning

16  
17 **Payment in Lieu of Property Taxes – Towne Courts, LLC**

18  
19 **FOR** the purpose of approving a Payment in Lieu of Taxes Agreement between the City of  
20 Annapolis and Towne Courts, LLC, for construction of affordable housing units in  
21 Annapolis, Maryland.

22  
23 **WHEREAS,** the Owner is fee simple owner of real property at 2010 West Street, Annapolis,  
24 Maryland 21401, known as Towne Courts, and as more particularly described in a  
25 deed dated April 2, 2019, and recorded among the land records of Anne Arundel  
26 County, Maryland in liber 33038, page 180 (the “Property”); and

27  
28 **WHEREAS,** the Owner intends to develop forty-two (42) dwelling units at the Property, thirty-  
29 seven (37) of which will operate as a qualified low-income housing units within the  
30 meaning of § 42(g)(1)(B) of the Internal Revenue Code of 1986 (26 U.S.C. §42),  
31 as may be amended (collectively, “26 U.S.C. §42”); and

32  
33 **WHEREAS,** the City is seeking to assist the Owner in providing habitable and affordable  
34 housing at the Property; and

35  
36 **WHEREAS,** under the Annotated Code of Maryland, subsidized housing for low- and moderate-  
37 income persons is exempted from real property taxes levied or imposed by a county  
38 or municipal corporation if Owner and City enter into a Payment in Lieu of Taxes  
39 Agreement and certain criteria are met and maintained.

40  
41 **NOW, THEREFORE,**

42  
43 **BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that the attached Payment in  
44 Lieu of Property Taxes Agreement between the City of Annapolis and Towne Courts, LLC is  
45 incorporated herein and hereby approved.

46

1 **AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that this  
2 resolution shall take effect from the date of its passage.  
3

4  
5 **EXPLANATION**

6 CAPITAL LETTERS indicate matter added to existing law.

7 ~~Strikethrough~~ indicates matter stricken from existing law.

8 Underlining indicates amendments.  
9  
10

1                   **CITY OF ANNAPOLIS PAYMENTS IN LIEU OF TAXES AGREEMENT**

2  
3                   **THIS PAYMENTS IN LIEU OF TAXES (PILOT) AGREEMENT** is made this  
4                   \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the "Agreement"), by and between **TOWNE COURTS**  
5 **LLC**, a Maryland limited liability company (the "Owner"), and the **CITY OF ANNAPOLIS**, a  
6 municipal corporation of the State of Maryland (the "City").  
7

8                   **WHEREAS**, the Owner is fee simple owner of real property at 2010 West Street,  
9 Annapolis, Maryland 21401, known as Town Courts, and as more particularly described in a deed  
10 dated April 2, 2019, and recorded among the land records of Anne Arundel County, Maryland in  
11 liber 33038, page 180 (the "Property"); and  
12

13                   **WHEREAS**, the Owner intends to develop forty-two (42) dwelling units and a clubhouse  
14 building at the Property, thirty-seven (37) of which will operate as a qualified low-income housing  
15 units within the meaning of § 42(g)(1)(B) of the Internal Revenue Code of 1986 (26 U.S.C. §42),  
16 as may be amended (collectively, "26 U.S.C. §42") (the "Project"); and  
17

18                   **WHEREAS**, the City is seeking to assist the Owner in providing habitable and affordable  
19 housing at the Property; and  
20

21                   **WHEREAS**, under the Annotated Code of Maryland, subsidized housing for low- and  
22 moderate-income persons is exempted from real property taxes levied or imposed by a county or  
23 municipal corporation if Owner and City enter into a PILOT agreement and certain criteria are met  
24 and maintained; and  
25

26                   **WHEREAS**, the parties are entering into this Agreement to allow for such purposes, which  
27 is authorized pursuant to Resolution No. R-39-19 of the City Council of the City of Annapolis.  
28

29                   **NOW THEREFORE**, in consideration of these premises and the terms and conditions  
30 stated below, and for other good and valuable consideration, the receipt and sufficiency of which  
31 the parties acknowledge, the parties hereby agree as follows:  
32

33                   **1. Operation of Property/Project.** For the term of this Agreement, the Owner shall:  
34                   (a) Operate the Project as rental housing for low income households and shall  
35 limit rents pursuant to the Extended Low Income Housing Covenant for Low Income Housing Tax  
36 Credits between the Owner and the Maryland Department of Housing and Community  
37 Development (the " Extended Use Covenant"); and

38                   (b) With Payments in Lieu of Taxes (PILOT), as defined below, make thirteen  
39 (13) dwelling units available to households having incomes of no more than sixty (60) percent of  
40 the area median income; eleven (11) dwelling units available to households having incomes of no  
41 more than fifty (50) percent of the area median income, six (6) dwelling units available to  
42 households having income no more than forty (40) percent of the area median income, and seven  
43 (7) dwelling units to households having income of no more than thirty (30) percent of the area  
44 median income. The restrictions set forth are intended to be in conformance with (and not in  
45 addition to) the requirements of the Extended Use Covenant (provided that the Extended Use  
46 Covenant is not modified to reduce the number of restricted units as set forth above) and do not

1 impose any additional obligations or restrictions not set forth therein; provided however, in the  
2 event that the income of a household in a rental unit on the Property increases in excess of the  
3 allowable maximum income and no longer complies with the affordability requirements of this  
4 Agreement, Owner shall make the next available unit of the appropriate type available to a  
5 compliant household, in accordance with Section 42 of the Internal Revenue Code of 1986, as  
6 amended; and

7 (c) Ensure that the Project qualifies and will continue to qualify in all respects  
8 under the provisions of said Section 7-506.1 of the Tax Property Article of the Annotated Code of  
9 Maryland.

10  
11 **2. Term.** Expressly subject to Paragraph 3 of this Agreement, this Agreement shall  
12 be in effect beginning on July 1, 2020 and ending forty (40) years later on June 30, 2060, or until  
13 one of the following occurs: (a) the Project is not owned or used for the provision of rental housing  
14 and related facilities to low income households at limited rents, pursuant to the Extended Use  
15 Covenant; or (b) the Project does not comply with Section 7-506.1 of the Tax Property Article of  
16 the Annotated Code of Maryland, as amended; or (c) the payment in lieu of taxes is not necessary  
17 for the continued financial feasibility of the Project, as solely determined by the City pursuant to  
18 Paragraph 3 of this Agreement (collectively, the “Term”).

19  
20 **3. Termination.** (a) Beginning July 1, 2035 and for each successive five (5) year  
21 period from that date throughout the Term of this Agreement, the Owner shall submit to the City  
22 Finance Director complete audited financial reports for the Project for the previous five (5) years  
23 and a projection of the Project's income and expenses for the next five (5) year period. If based on  
24 a review of the audited financial reports and the projections for the Project, the City determines  
25 that the Project may have net cash from the operation of the Project after payment of all expenses  
26 (including, but not limited to, reimbursement of all certified development and construction costs,  
27 management fees, investor servicing fees, debt service (including any cash flow debt) and  
28 anticipated costs to meet the physical needs of the Project) and an seven percent (7%) return on  
29 the tax credit equity investment, calculated on a cumulative basis, then the City may modify the  
30 PILOT at that time to require the Owner to apply such net cash toward the taxes otherwise payable  
31 had the Property not been exempt from ordinary City real property taxes based on the assessment  
32 for City real property taxes for the Project, or the City may decide that a PILOT is no longer needed  
33 and may choose to discontinue its obligations under this Agreement, and terminate this Agreement

34 (b) If the Owner is in default for one hundred eighty (180) calendar days for any  
35 payments required under any of the provisions of this Agreement, the City may, at its option,  
36 declare a default by providing written notice of the default to the Owner and to the holders of all  
37 mortgages or deeds of trust. If within thirty (30) calendar days after such notice, the payments  
38 have not been brought current, then the City may, at its option, declare all amounts due as follows:  
39 a sum equal to the total real property taxes which would have been due from the Owner in the  
40 absence of this Agreement in such fiscal year, plus all interest, if any, less all amounts actually  
41 paid under this Agreement. To enforce its rights under this Paragraph, the City may renegotiate  
42 this Agreement, foreclose, or seek any other remedy available at law or in equity, including but  
43 not limited to termination of this Agreement. Notwithstanding anything to the contrary contained  
44 in this Agreement, payments due under this Paragraph shall be considered a first lien and a real  
45 property tax lien of the City of Annapolis against the Property and superior to any other liens  
46 placed upon the Property. Further, notwithstanding anything to the contrary contained herein,

1 the City hereby agrees that any cure of any default made or tendered by the Owner, its affiliate, or  
2 any lender, whose security is the Property, or any investor member of Owner (the "Investor  
3 Member"), shall be deemed to be a cure by the Owner, and accepted or rejected on the same basis  
4 as if made or tendered by the Owner.

5 (c) In the event of a default under this Agreement by the Owner, which default is other  
6 than a monetary default with respect to its payments required under the provisions of this  
7 Agreement, the Owner or its affiliate, and the Investor Member shall have a period of thirty (30)  
8 calendar days after Owner's receipt and Investor Member's receipt of written notice from the City  
9 of such default, to cure such non-monetary default prior to exercise of remedies by the City  
10 hereunder, provided that if such default is other than a monetary default as described hereinbefore,  
11 and such default cannot be cured or remedied by the Owner of the Investor Member within said  
12 thirty (30) day period and the Owner and/or the Investor Member is diligently pursuing such cure  
13 or remedy, the thirty (30) day period will be extended for the time necessary to complete such cure  
14 or remedy by the Owner and/or the Investor Member, but in no event longer than a total of one  
15 hundred twenty (120) days after said written notice from the City to Owner and Investor Member  
16 of the default. If any non-monetary default is not cured within said one hundred twenty (120) day  
17 period, then the City may terminate this Agreement.

18  
19 **4. Waiver of Property Taxes.** Expressly subject to Paragraph 3 of this Agreement,  
20 the City shall not levy or impose any City real property taxes upon the Property, or upon the Owner  
21 in relation to the Property, during the Term of this Agreement; provided, however, if at any time  
22 during the term of this Agreement, the City's real property taxes are less than the PILOT specified  
23 in Paragraph 7, the Owner shall pay the ordinary City real property taxes payable had the Project  
24 not been exempt. Owner shall not be required to pay both the City real property taxes and the  
25 PILOT. For the avoidance of doubt, nothing in this Agreement prohibits the Owner from  
26 contesting the real estate tax assessment as if this Agreement were not in effect.

27  
28 **5. Public Services and Facilities.** Expressly subject to Paragraph 3 of this  
29 Agreement, the City, without cost or charge to the Owner or the tenants of the Property (other than  
30 the PILOT specified in Paragraph 7, shall furnish or cause to be furnished to the Owner and the  
31 tenants of the Property, public services and facilities of the same character and to the same extent  
32 as are furnished from time to time without cost or charge to other dwellings and inhabitants in the  
33 City, during the Term of this Agreement.

34  
35 **6. Consent of Owner; Transfer/Exchange of Property.**

36  
37 (a) As long as the beneficial title to the Property is held by the Owner, or by  
38 any members, successors or assigns of the Owner who shall continue its use as a qualified  
39 low-income housing project pursuant to 26 U.S.C. §42, this Agreement shall not be changed,  
40 modified or rendered null and void without the consent of the Owner, and the privileges and  
41 obligations of the Owner and the City in accordance with this Agreement shall remain in full force  
42 and effect with respect to the Property during the Term of this Agreement, except as expressly  
43 permitted by Paragraph 3 of this Agreement which shall control over this Paragraph 6.

44 (b) The Owner shall not make any transfer or exchange of the Property which  
45 would change its use as a residential rental property during the period of the PILOT.

1 (c) This Agreement shall not survive a sale or transfer of the Property or the  
2 sale or transfer of the partnership interest or other beneficial ownership interest of the Owner in  
3 lieu of the sale of the Property unless a continued financial need for the PILOT has been  
4 demonstrated and the transfer or sale has been approved by the City Council. Notwithstanding the  
5 foregoing, this Agreement may be assigned to a holder of a mortgage or deed of trust in the event  
6 of a foreclosure or transfer under said mortgage or deed of trust ("Foreclosure Event"), without  
7 the need for City Council approval, provided that the assignee shall be subject to the terms and  
8 conditions of this Agreement.

9  
10 **7. Payments in Lieu of Taxes (PILOT).** During the Term of this Agreement, the  
11 Owner shall make annual payments in lieu of real property taxes for the Property in the amounts  
12 set forth in this Paragraph 7 (the "Payments in Lieu of Taxes" or "PILOT"), or real property taxes  
13 on the Property, whichever is less, as payment for the public services and facilities furnished from  
14 time to time by the City, without other cost or charge for or with respect to the Property, as follows:

15 (a) For the first City fiscal year of the Term, July 1, 2020 through June 30,  
16 2021, the Owner's annual PILOT payment shall be calculated as being equal to the base amount  
17 of Seven Thousand Six Hundred Seventy-Two Dollars and No Cents (\$7,672.00).

18 (b) For the City fiscal years thereafter until the expiration of the Term of this  
19 Agreement, or earlier termination thereof, the annual PILOT payment shall be equal to the previous  
20 City fiscal year's PILOT, increased by an annual adjustment factor of four (4) percent.

21 (c) All PILOT payments shall be paid on a City fiscal year basis covering the  
22 period July 1 through June 30 of the following year, the same period as encompassed by a normal  
23 real estate tax levy.

24 (d) All PILOT payments shall be due on the first (1<sup>st</sup>) day of July of each year  
25 and payable on or before September 30th of each year without a penalty being added to the amount  
26 due. If any PILOT payment has not been made by September 30th of the year due, then all real  
27 property taxes, penalties and interest shall become due and payable in full and subject to any and  
28 all collection procedures permitted to the City by the laws of the State of Maryland, and the City  
29 may terminate this Agreement

30  
31 **8. Binding Effect.** The terms of this Agreement shall be binding on and enforceable  
32 against the parties and their respective successors and assigns.

33  
34 **9. Governing Law.** In all actions arising from this Agreement, the laws of the State  
35 of Maryland shall govern, and the venue for all actions initiated pursuant to this Agreement shall  
36 be exclusively the Courts of Anne Arundel County, Maryland. The parties hereby waive jury trial  
37 in all actions initiated pursuant to this Agreement.

38  
39 **10. Recitals and Conflicting Terms.** The Recitals (WHEREAS clauses) are hereby  
40 incorporated into this Agreement.

41  
42 **11. Severability.** If any of the provisions of this Agreement are declared by a court or  
43 other lawful authority to be unenforceable or invalid for any reason, the remaining provisions  
44 hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by  
45 law.

46



1  
2           **IN WITNESS WHEREOF**, the Owner and the City have caused this Agreement to be  
3 executed under Seal as of the day and year written above.

4  
5 WITNESS

TOWNE COURTS LLC

6  
7           By: PIRHL Towne Courts LLC,  
8           its managing member

9  
10  
11 \_\_\_\_\_ By: \_\_\_\_\_

12           Name: David J. Uram

13           Title: Managing Director

14  
15  
16 STATE OF MARYLAND, COUNTY OF \_\_\_\_\_:

17  
18           I hereby certify that on this \_\_\_ day of \_\_\_\_\_, before me, the subscriber, a  
19 Notary Public in and for the State of Maryland, personally appeared David J. Uram, known to me  
20 or satisfactorily proven to be the person whose signature appears above, and he has signed this  
21 Agreement in my presence and acknowledged that he is the Managing Director of PIRHL Towne  
22 Courts LLC, the Managing Member of the Owner and authorized to sign this Agreement on its  
23 behalf and on behalf of the Owner and to bind both thereby, and this Agreement is his free and  
24 voluntary act and the free and voluntary act of him/her and the Owner made for the purposes set  
25 forth herein.

26  
27           Witness my signature and notarial seal.

28  
29 \_\_\_\_\_  
30 Notary Public  
31 My Commission expires:

32  
33  
34  
35  
36 ATTEST:

CITY OF ANNAPOLIS

37  
38  
39 \_\_\_\_\_  
40 Regina C. Watkins-Eldridge, MMC,  
41 City Clerk

By: \_\_\_\_\_  
Gavin Buckley, Mayor (Seal)

42  
43 APPROVED FOR SUFFICIENT APPROPRIATIONS  
44 AND AVAILABILITY OF FUNDS:

45  
46 \_\_\_\_\_

1 Joanna D. Dickinson, Director  
2 Finance Department  
3 Source of Funds: \_\_\_\_\_  
4

5 APPROVED FOR FORM AND LEGAL SUFFICIENCY:  
6  
7

8 \_\_\_\_\_  
9 OFFICE OF THE CITY ATTORNEY  
10

11  
12 STATE OF MARYLAND, COUNTY OF Anne Arundel:  
13

14 I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the subscriber, a  
15 Notary Public in and for the State of Maryland, personally appeared Gavin Buckley, known to me  
16 or satisfactorily proven to be the person who signature appears above, and he has signed this  
17 Agreement in my presence and acknowledged that he is Mayor of the City of Annapolis and  
18 authorized to sign this Agreement on its behalf and to bind it thereby, and this Agreement is the  
19 free and voluntary act of the City of Annapolis made for the purposes set forth herein.  
20

21 Witness my signature and notarial seal.  
22  
23  
24

25 \_\_\_\_\_  
26 Notary Public  
27 My Commission expires:  
28