

RESOLUTION 134 - 2013

**RESOLUTION AUTHORIZING DEVELOPER'S AGREEMENT BETWEEN THE
BOROUGH OF WOODBURY HEIGHTS AND THE WOODBURY HEIGHTS
PLANNING BOARD AND RUKENSTEIN & ASSOCIATES, LLC**

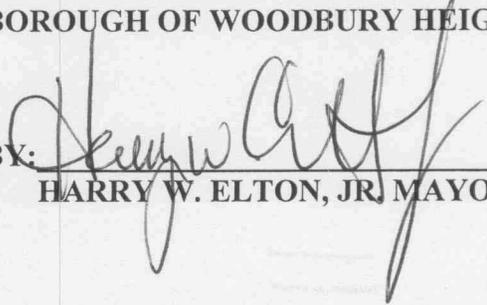
WHEREAS, Rukenstein & Associates, LLC, as Developer, has proposed to construct a One Hundred Percent Affordable Housing Project consisting of a minimum of ten units of Low and Moderate Income Housing for Special Needs and Supportive Housing on a property known as Lot 6, Block 91 of the Borough Tax Maps; and

WHEREAS, the Developer has represented that it will ensure that each of the units to be constructed will be affordable to the region's low and moderate income households and will otherwise be creditworthy units in accordance with N.J.A.C. 5:97 and N.J.A.C. 5:80-26.01 et seq., and other applicable law in order that the Borough may use such units as partial satisfaction of the Borough's affordable housing obligations; and

WHEREAS, the terms and conditions of this Agreement have been recommended by the Borough Solicitor and by Special Counsel for Affordable Housing Matters;

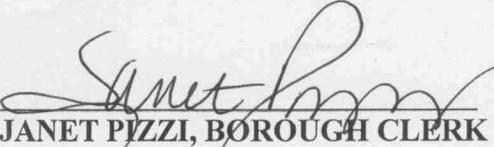
NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Woodbury Heights, with the Mayor concurring, that the annexed "Developers Agreement By and Between the Borough of Woodbury Heights and the Borough of Woodbury Heights Planning Board and Rukenstein & Associates, LLC as Developer" is hereby authorized for execution by the proper Borough Officials.

BOROUGH OF WOODBURY HEIGHTS

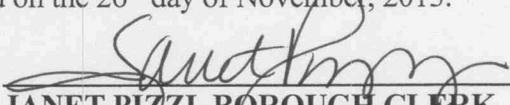
BY: 

HARRY W. ELTON, JR., MAYOR

ATTEST:


JANET PIZZI, BOROUGH CLERK

The foregoing Resolution was duly adopted by the Borough Council of the Borough of Woodbury Heights at the regular meeting held on the 26th day of November, 2013.


JANET PIZZI, BOROUGH CLERK

**DEVELOPER'S AGREEMENT BY AND BETWEEN THE BOROUGH OF
WOODBURY HEIGHTS AND THE BOROUGH OF WOODBURY HEIGHTS
PLANNING BOARD AND RUKENSTEIN & ASSOCIATES, LLC AS DEVELOPER**

THIS AGREEMENT ("Agreement") made this 26 day of Nov., 2013 by and between

The Borough of Woodbury Heights, a municipal corporation of the State of New Jersey, County of Gloucester, having an address at 500 Elm Avenue, Woodbury Heights, New Jersey 08097 (hereinafter the "Borough");

And

The Planning Board of the Borough of Woodbury Heights, having at address at 500 Elm Avenue, Woodbury Heights, New Jersey 08097 (hereinafter the "Planning Board");

And

Rukenstein & Associates, LLC, having an address at PO Box #1 407 Pennington Titusville Road, Titusville, NJ 08560, (hereinafter the "Developer").

Collectively, the Borough, The Planning Board and the Developer shall be referred to as the "Parties."

WHEREAS, the Developer has proposed to construct a one hundred percent affordable housing project consisting of a minimum of 10 units of low and moderate income housing for special needs and supportive housing (hereinafter the "Project") on a parcel of land known as Lot 6 in Block 91(hereinafter the "Property") to be acquired by the Borough and to be contributed to the Developer for one dollar (\$1.00) or other nominal amount as the Borough's share of its contribution to the Project.; and

WHEREAS, the Developer has represented to the Borough that it will ensure that each of the units in the Project will be affordable to the region's low and moderate income households and will be creditworthy units in accordance with N.J.A.C. 5:97, N.J.A.C.5:80-26.1 et seq. and other applicable law to enable the Borough to use such units towards satisfaction of the Borough's Mount Laurel affordable housing obligations; and

WHEREAS, the Borough has determined that the construction of the Project, in compliance with the requirements of COAH and the implementation of the required affordability controls, will assist the Borough in satisfying its affordable housing obligations; and

WHEREAS, the Borough, the Planning Board and the Developer have agreed to enter into this Development Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties; and

WHEREAS, the Developer agrees to implement the Project in accordance with the

relevant terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree as follows:

ARTICLE I - PURPOSE

1.1 The purpose of this agreement is to create a realistic opportunity for the creation of a minimum of 10 affordable, non-age-restricted units on a .79 -acre site previously owned by the Borough, which the Borough is seeking to reacquire, by setting forth the obligations of each party to facilitate the construction of said affordable units on the subject property.

1.2 It is also the purpose of this Agreement to create COAH creditworthy supportive and special needs housing.

ARTICLE II - BASIC TERMS

2.1 **The "Project"**: Subject to approval by the Planning Board, the Project shall consist of a minimum of ten (10) one hundred percent affordable units consistent with the Concept Plan attached hereto as Exhibit "A" with all other required site improvements including, but not limited to parking, landscaping, lighting, storm water maintenance, on and off-site infrastructure, and roadways and other improvements. At least fifty (50) percent of the units in the project shall be leased to low income households in accordance with applicable COAH and UHAC standards.

ARTICLE III - DEVELOPER'S OBLIGATIONS

3.1 **Obligations to develop Subject Property In Accordance With Various Requirements**: The Developer agrees, at its sole cost and expense, to develop the Property in accordance with (a) the Concept Plan attached hereto as Exhibit A; (b) the Zoning Amendment Ordinance attached hereto as Exhibit B; (c) any developmental approvals by the Woodbury Heights Borough Planning Board; (d) any other applicable governmental approvals, and (e) the terms and conditions of this Agreement.

3.2 **Obligations To Develop In Accordance With Local Planning Approval**: Developer shall be obligated to obtain all necessary governmental approvals, including Planning Board approvals, which shall be acquired before commencement of construction on the Project. Developer shall submit applications for all necessary preliminary and final site plan approvals and any subdivision to the Planning Board in accordance with Municipal Ordinances, the MLUL, the Zoning Amendment Ordinance, and the Project Schedule, which is attached hereto as Exhibit C, Developer agrees that all approvals shall be subject to full satisfaction of the terms and requirements of this Agreement.

3.3 **Obligation to Provide Creditworthy Units And Maintain the Creditworthiness of the Units**: Developer shall ensure that the Project results in the construction of ten (10) creditworthy affordable housing units to be used by the Borough in

addressing its current and/or future Mount Laurel affordable housing obligations. Developer shall ensure that all units constructed on the Property shall comply and comport with all applicable laws, including but not limited to COAH regulations (N.J.A.C. 5:97-1.1 et seq.), the Uniform Housing Affordability Controls (“UHAC”)(N.J.A.C. 5:80-26.1 et seq.) regulations and such other laws as may apply. The Parties acknowledge that these regulations address, among other things, bedroom distribution requirements, very low/low/moderate income split requirements, pricing requirements, affirmative marketing requirements, screening requirements, re-rental requirements, deed restriction requirements and unit monitoring report preparation as required by COAH. The supportive and special needs housing provided shall adhere to N.J.A.C. 5:97-6.10.

3.4 Obligation To Bear All Expenses Associated With Creating and Maintaining Creditworthy Units. Other than its contribution to the Project of land, the Borough shall have no financial obligations under this provision to assure the creditworthiness of the units, and all associated expenses shall be solely borne by the Developer, its successors, or assigns, which expenses include, but are not limited to providing an Administrative Agent at its exclusive expense to perform all administrative tasks. The administrative tasks include those responsibilities as set forth in N.J.A.C. 5:80-26.14 including, but not limited to, conducting an outreach process, conducting interviews with interested households, creating and maintaining a list of eligible households, determining income eligibility and all other activities to ensure that restricted units are rented to low- and moderate-income households. The Developer shall also be responsible for the costs of all funding applications including, but not limited to, low income housing tax credits, special needs trust funds, County HOME funds, Federal Home Loan Bank financing, construction and permanent financing.

3.5 Obligation To Cooperate With the Borough in its Efforts To Monitor the Units: The Parties acknowledge that the Borough may have the obligation from time to time to generate information necessary to demonstrate the creditworthiness of the units. Developer will cooperate with the Borough and provide all monitoring and reporting requirements within fifteen (15) business days of the request.

3.6 Obligation to Properly Deed Restrict The Units: The Project will be deed restricted for a minimum of thirty (30) years as affordable housing so that all the units therein will qualify for affordable housing credits towards the Borough’s affordable housing obligations. Developer will retain an experienced Administrative Agent or successor Administrative Agent/s subject to Borough Council approval, and will work with the Borough’s special Mount Laurel counsel, to ensure that the deed restriction satisfies COAH and UHAC regulation requirements and all other requirements of law. Developer shall have an obligation to record the deed restriction, along with this Agreement, with Gloucester County. Developer shall be responsible for all costs associated with retaining an Administrative Agent in conjunction with this Project, and said Administrative Agent shall be responsible for providing the Borough with all information that it or other governmental entities may require.

3.7 Obligation To Develop Subject Property In Accordance With A Specific Schedule: The Project Schedule as set forth in attached Exhibit C shall control the progress and completion of the Project and Developer shall adhere to the Project Schedule subject only to

relief resulting from the occurrence of an uncontrollable circumstance, such as an act of God (lightning, blizzards, hurricane, etc.), man-made disasters (an explosion, nuclear radiation, etc.), a Federal or State court order, a delay caused by not getting a governmental approval, or a strike or similar labor action. If Developer fails to meet the Project Schedule or determines at any time that it will fail to meet the Project Schedule, Developer shall promptly provide notice to the Borough stating: (a) the reason for the failure to complete the applicable task, (b) the proposed method for correcting such failure, (c) a schedule for completing such task, and (d) the method or methods by which the Developer proposes to achieve subsequent tasks by the relevant date in the Project Schedule. This Section shall not in any way limit the rights of the Borough under any other relevant sections of this Agreement.

3.8 Obligation to Provide Infrastructure and Other Improvements: Developer will design and construct all infrastructure and other improvements necessitated by the Project in a workmanlike manner and in accordance with all applicable laws and regulations, as well as the requirements of the Zoning Amendment Ordinance attached hereto as Exhibit B. Developer acknowledges that such infrastructure improvements may include, but are not limited to, road improvements, walkways, storm water facilities, sidewalks, electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television/internet cable lines and other utilities. The Developer agrees that it is solely responsible to undertake the appropriate measure to negotiate with, acquire, relocate or otherwise address the existence of these utilities and infrastructure or other improvements and easements therefore, in order to complete the Project as provided by this Agreement.

3.9 Obligation to Enter PILOT Agreement At Specific Rate: The Developer's obligations contained in this Agreement are expressly conditioned upon the execution of a mutually acceptable Agreement for Payment in Lieu of Taxes (hereinafter "PILOT"), providing for five percent (5%) of the Project's revenue as a payment in lieu of taxes pursuant to the authority contained in Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (N.J.S.A. 55:14K-1 et seq.)(the "HMFA Law") with the approval of the New Jersey Housing and Mortgage Finance Agency, as required by N.J.S.A. 55:14K-37 or other New Jersey law that authorizes the PILOT agreement with respect to the Project. The negotiation and execution of such PILOT shall be completed in accordance with the Project Schedule set forth in Exhibit C.

3.10 Obligation To Obtain A Certificate of Completion: The Developer shall be responsible to obtain, from the Borough, a Certificate of Completion as set forth *infra* in Section 4.07.

3.11 Obligation Not To Suspend, Discontinue or Terminate Work: Once Developer commences the Project, Developer shall not suspend or discontinue its performance of its obligations under this Agreement or terminate this Agreement (other than in the manner provided for herein) for any reason other than an uncontrollable circumstance (as defined *supra* in Section 3.9), but only to the extent and for the period of time that such performance is limited or prevented as a direct result of such occurrence and subject to such time as Developer may reasonably require to re-commence its development activities.

3.12 **Obligation To Lease Units In Manner That Maintains Their Creditworthiness:** Notwithstanding the foregoing, Developer, including its successors and assigns shall have the continuing responsibility to lease the units in accordance with applicable Federal, State, and local laws for at least thirty (30) years and maintain the affordable housing creditworthiness of the units. In the event of any breach of this continuing responsibility, the Borough shall have all remedies available in equity and law.

ARTICLE IV - OBLIGATIONS OF THE BOROUGH AND THE PLANNING BOARD

4.1 **Obligation of Borough to Appoint Rukenstein & Associates, LLC as the Developer of the Subject Property:** Rukenstein & Associates, LLC is hereby designated as Developer of the Project Site and shall have the exclusive right to develop and implement the Project in accordance with the terms and conditions of this Agreement. Developer may not assign or transfer these rights or responsibilities without the prior written authorization of the Borough.

4.2 **Obligation to Provide A PILOT:** Subject to appropriate notice to the public and the public's opportunity to be heard, and consistent with Section 3.11, the Borough shall execute an Agreement for Payment in Lieu of Taxes.

4.3 **Acknowledgement of Satisfaction of Obligation to Adopt Ordinance:** The Parties acknowledge that prior to the execution of this Agreement by all Parties, the Borough has introduced the Zoning Amendment Ordinance attached hereto as Exhibit B (hereinafter the "Ordinance"), the Planning Board has reviewed the Ordinance to ensure that it is consistent with the Master Plan, and, the Borough has adopted the Ordinance after a duly noticed public hearing. The Parties further acknowledge that the adoption of the Ordinance satisfies the Borough's zoning obligations under this Agreement. The Parties acknowledge that the Ordinance contains an "effective date" section, which provides that the Ordinance will only take effect upon the Court's approval of this Agreement. Developer waives any right to challenge or fail to abide by this provision.

4.4 **Obligation to Acquire Property.** The Borough shall undertake to acquire the Property and contribute the Property to the Project by no later than March 1, 2014.

4.5 **Obligation of Planning Board to amend Housing Element and for Borough to Endorse Amendment To Include the Project:** The Parties acknowledge that this Agreement is subject to the Woodbury Heights Planning Board amending its Housing Element and Fair Share Plan to include the project and the Borough endorsing said Amendment. If the Planning Board declines to adopt a Plan Amendment after a public hearing or if the Borough declines to adopt the Plan Amendment after giving the public an opportunity to be heard, this agreement shall be void, the parties shall be restored to the status quo ante and no party shall be permitted to use this agreement to attempt to gain an advantage against each other in future litigation. The Parties acknowledge that said plan amendment will satisfy the obligation of the Planning Board and Borough to amend the Borough's current Housing Element and Fair Share Plan.

4.6 **Obligation to Assist Developer In Pursuing Low Income Housing Tax Credits or Special Needs Financing.** The Borough shall adopt resolutions and take other appropriate actions to provide the support required to facilitate Developer's efforts to secure the funding from non-municipal sources necessary to assist the economic feasibility of the Project. The Borough will work with the Developer in preparing an eligible and competitive tax credit application for a 2014 submission and, if necessary, a submission in 2015. The Parties acknowledge that to be competitive, the Developer will need to demonstrate that it has established site control, secured preliminary site plan approval and entered into a PILOT consistent with this Agreement.

4.7 **Obligation to Adopt A Resolution of Intent to Bond, if Necessary.** The Borough shall have an obligation to adopt a resolution of intent to bond, if necessary, to provide any gap in funding needed to consummate the project. Notwithstanding the foregoing, the Borough shall have a right to declare this agreement null and void and to have the parties return to the status quo ante if the Developer makes a fiscal demand on the Borough for the Project.

4.8 **Obligation to Provide a Certificate of Completion Upon Developer's Satisfaction of Certain Responsibilities.** The Borough shall issue a certificate ("Certificate of Completion") in recordable form to Developer upon (i) the completion of the Project and satisfaction of its responsibilities under this Agreement, (ii) the obtaining of a Certificate of Occupancy, temporary or permanent, and proof that all labor, services, materials and supplies used in connection thereto have been paid for (or, if disputed, bonded for), and (iii) the issuance of an appropriate certification from an architect in a form deemed acceptable to the appropriate Borough professional that the Project has been completed in accordance with the drawings and specifications for the buildings.

4.9 **Obligation of Planning Board To Fast Track Development Applications:** The Planning Board shall process, review, and adjudicate all development applications for the Project and the Property in an expeditious, "fast-track" manner, which shall include, if requested and paid for by the Developer, any required special meetings of the Planning Board. Specifically included in the concept of "fast-track" review shall be the agreement of the Planning Board to review and adjudicate the Developer's application if the application is for preliminary or final approvals in accordance with the time frames established by the MLUL.

4.10 **Obligation to Transfer Property:** Upon Developer securing all requisite development approvals and non-municipal funding commitments necessary to construct the Project, the Borough shall contribute, for a nominal cost and as a contribution to address any municipal matching requirement pursuant to HMFA's Qualified Allocation Plan, the Subject Property to Developer for purposes of developing the Project. The title to the Property shall be good and marketable and free from any liens, encumbrances or restrictions that unreasonably interfere with the intended use of the Property as an affordable and special needs housing development.

ARTICLE V- ENVIRONMENTAL RESPONSIBILITIES

5.1 **Property Conditions:** It is intended and agreed between the Parties that the Borough makes no promises or representations as to the state of the Subject Property to be contributed to the Project, or the Property's environmental condition, or the ability for the Developer to build on the Property.

5.2 **Right to Inspect:** The Developer, at its sole expense, may enter upon and conduct environmental inspections of the subject property. The Developer shall indemnify, defend and hold the Borough harmless for any claim or damage which may be caused by the Developer or its representatives entering upon the property and shall restore the property to a condition existing prior to such inspection. If the Developer's inspection discloses an adverse environmental condition which would reasonably prohibit construction of a minimum of 10 units of affordable low and moderate income housing for special needs and supportive housing occupancy, then and in that event, the Developer shall have the option to terminate this agreement by delivery of written notice to the Borough and Borough Planning Board at any time on or before 60 days from the date that the Borough provides written notice to the Developer by certified mail, return receipt requested, that the Borough has acquired title to the subject to property.

5.3 **Developer Environmental Obligation:** If Developer foregoes its right to void this Agreement pursuant to Section 5.2, Developer agrees and specifically assumes, at its sole expense, any and all responsibility for the investigation and remediation of all environmental conditions at, on, under or migrating to or from the Property as may be required by applicable environmental laws and regulations to a level that the property will be sufficiently clean to construct the 10-unit affordable residential project contemplated hereby. Developer also agrees, at its sole expense, to obtain all environmental approvals for the remediation of the Project Property.

ARTICLE VI – COURT APPROVAL OF AGREEMENT

6.1 **Court Approval of the Agreement:** Within 30 days of the execution of this Agreement by all Parties, the Parties shall seek Court approval of this Agreement. This Agreement is subject to Court approval of same following a duly noticed fairness hearing.

ARTICLE VII – COOPERATION AND COMPLIANCE

7.1 **Implementation of Agreement:** The parties agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Borough's obligation to cooperate shall be further conditioned upon the Developer paying and maintaining current real estate taxes and ultimately the PILOT. Furthermore, the Borough's cooperation shall be conditioned upon the Borough being able to provide such cooperation with municipal employees. If the Borough determines it must utilize the services of outside professionals to cooperate, the cooperation is contingent upon Developer bearing those costs and expenses. Prior to the Borough taking any action that would subject the Developer to any additional cost or expense under this section, the Borough shall provide the Developer with an estimate of such costs, and obtain Developer's

written approval. If such approval is rejected, the Borough will be under no obligation to cooperate.

7.2 **Project Progress Meetings:** Developer shall submit quarterly status reports to Borough in writing until such time as the Borough issues a Certificate of Occupancy for the Project. In addition, Borough may require, in its sole discretion that Developer meet with Borough to discuss project progress, on an as-needed basis.

7.3 **Enforcement of Agreement:** The Parties hereto agree to cooperate with each other, furnish all necessary and reasonable documentation and take all necessary actions to assure compliance with the terms of this Agreement.

ARTICLE VIII – NOTICES

8.1 **Notices:** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO DEVELOPER: Rukenstein & Associates, LLC
PO Box #1
Titusville, NJ 08560
Facsimile: (609) 730-8139

TO THE BOROUGH OF WOODBURY HEIGHTS:

Janet Pizzi, Municipal Clerk/Administrator
Borough of Woodbury Heights
500 Elm Avenue
Woodbury Heights, NJ 08097
Facsimile: (856) 848-2381

WITH COPIES TO: Jeffrey R. Surenian, Esq., Special Counsel
Jeffrey R. Surenian and Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Facsimile: (732) 612-3101

AND TO: Barry N. Lozuke, Esq., Borough Attorney

Law Office of Barry N. Lozuke, Esq.
131 Delaware Street
Woodbury, NJ 08096
Facsimile: (856) 845-6121

TO THE BOARD:

Anne Deeck, Land Use Admin/Secretary
Borough of Woodbury Heights
500 Elm Avenue
Woodbury Heights, NJ 08097
Facsimile: (856) 848-1763

WITH A COPY TO:

Gerald Sinclair, Esq., PB Attorney
38 Cooper St.
Woodbury, NJ 08096
Facsimile: (856) 848-7772

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

ARTICLE IX – MISCELLANEOUS

9.1 **Severability:** Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

9.2 **Successors Bound:** The Agreement shall be binding upon the respective parties hereto and their successors and assigns.

9.3 **Governing Law:** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

9.4 **No Modification:** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

9.5 **Recording:** It is intended that this Agreement will be recorded in the Clerk's Office of Gloucester County by the Developer.

9.6 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

9.7 **Voluntary Agreement:** The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that

there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

9.8 **Interpretation:** In the event of any subsequent dispute or ambiguity involving the interpretation of this Agreement, inasmuch as Developer and its attorneys have had substantial input into the terms and conditions contained herein, this Agreement shall not be interpreted against the Borough or its attorneys as a result of the Agreement being primarily drafted by the Borough.

9.9 **Assignment:** None of the Parties may assign this Agreement without the written consent of the other Parties. Furthermore, the Developer may, upon advance notice to the Borough, but without consent of Borough, assign this Agreement to other existing or to be created entities that are owned or controlled by the Developer.

9.10 **Preparation:** The Parties acknowledge that they each have been represented by counsel with regard to the preparation of this Agreement and that this Agreement has been prepared jointly by attorneys representing each Party as a means of furthering the purposes set forth, and therefore, this Agreement shall be construed on a parity among the Parties, and any presumption for resolving ambiguities against the drafter or any Party shall not apply.

ARTICLE X – BOROUGH TERMINATION RIGHTS

10.1 **Additional Termination Rights of Borough.** In addition to the rights and remedies set forth in this Agreement, the Borough shall have the right to terminate this Agreement upon written notice to Developer, notwithstanding the occurrence of an uncontrollable circumstance as described above or an event of default as described below, if Developer has not commenced construction of the Project within two years of the time frames indicated in the Project Schedule attached hereto as Exhibit C, unless extended by the Parties and consistent with the time extension provisions and criteria of the Municipal Land Use Law at N.J.S.A. 40:55D-49.

ARTICLE XI - EVENTS OF DEFAULT AND REMEDIES

11.1 **Events of Default.** Any one or more of the following shall constitute an Event of Default hereunder, unless such event results from the occurrence of an uncontrollable circumstance as described above:

(a) Failure of the Developer, the Borough or the Borough's Planning Board to observe and perform any covenant, condition or agreement in this Agreement and continuance of such failure for a period of thirty (30) days, after receipt by the Party of written notice from the other Party specifying the nature of such failure and requesting that such failure be remedied ("Default Notice"); provided however that in the event any such default is not capable of being cured within said period, then provided that the defaulting Party has diligently commenced a cure within such period, the cure period shall be extended for an additional period of time necessary to allow Developer to effect the cure.

(b) The Developer shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Developer; (iii) the Developer (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Developer has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) the Developer shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Developer and shall not have been dismissed for a period of sixty (60) consecutive days; (vii) an Order for Relief shall have been entered with respect to or for the benefit of the Developer under the Bankruptcy Code; or (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Developer by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Developer or a substantial part of its assets and such order, judgment or decree shall have continued un-stayed and in effect for any period of sixty (60) consecutive days.

(c) The Developer shall fail to satisfy its obligations with respect to the timely construction of the Project in accordance with this Agreement, final site plan approval, or the Project Schedule, following the issuance of any Governmental Approvals required to do so, or shall abandon or substantially suspend construction work, and any such failure, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after receipt of the Default Notice from the Borough, provided, however, if the default or violation is one which cannot be completely remedied within ninety (90) days after receipt of the Default Notice, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same and the default is fully remedied not later than one hundred forty-five (145) days after mailing of the Default Notice.

(d) The Developer shall otherwise default in or violate its obligations with respect to the Project Schedule and any such default or violation shall not be cured, ended, or remedied within thirty (30) days after receipt of the Default Notice from the Borough; provided however that in the event any such default is not capable of being cured within said period, then provided that Developer has diligently commenced a cure within such period, the cure period shall be extended for an additional period of time necessary to allow Developer to effect the cure.

(e) The Developer or any successor Developer shall fail to pay any real estate taxes or assessments on any real property or any part thereof owned by it in the Borough when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any material men's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and within thirty (30) days after written demand by Borough to do so, such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, including but not limited to the provision of a surety bond satisfactory to the Borough.

(f) The Developer or any successor Developer shall fail to pay the PILOT.

(g) The occurrence of any action or inaction by the Developer which nullifies, terminates, delays or endangers COAH compliance for any of the residential units within the Project or the Borough's entitlement to credits and rental bonuses for all of the 10 units contemplated by this agreement and any such default, nullification, termination, delay, endangerment or violation shall not be cured, ended, or remedied within thirty (30) days after receipt of the Default Notice from the Borough; provided however that in the event any such default is not capable of being cured within said period, then provided that Developer has diligently commenced a cure within such period, the cure period shall be extended for an additional period of time necessary to allow Developer to effect the cure.

(h) The Developer shall implement a transfer of the property in violation of this Agreement.

11.2 Remedies Upon Event of Default:

(a) Termination or Institution of Lawsuit. In the event of an Event of Default by any party hereto, the non-defaulting party shall provide notice of the default to the other party. The party accused of default shall have 30 days either to agree or dispute the claim of default. If the party accused of default disputes the default, then the non-defaulting party may terminate this Agreement upon a final un-appealable judgment of a Court having jurisdiction over this matter and/or may institute whatever action, at law or in equity, it may deem desirable, including the seeking of damages.

(b) Additional Remedies in the Event of Default. In the event of an Event of Default, in addition to the right to terminate the Agreement, the Borough may implement any or all of the following remedies:

(i) Suspension of cooperation with Developer pursuant to the terms of this Agreement;

(ii) Suspension of the review and/or approval process of any application or submission related to any Governmental Approvals.

(c) Additional Remedies of the Borough in the Event of Termination of the Agreement. In the event that this Agreement is terminated by the Borough, the Developer's designation as the Developer of the Project shall in that event automatically terminate.

11.3 **No Waiver of Rights and Remedies by Delay:** Any delay by an aggrieved party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved party of such rights or limit the aggrieved party's rights in any way. It is the intent of this provision that the parties' rights under this Agreement shall not be unduly abridged by concepts of waiver, laches, or otherwise, so that the parties may enforce their rights while it is still possible to resolve the problems created by the default involved. Nor shall any waiver in fact made by the aggrieved party with respect to any specific default by the defaulting party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other defaults by the

defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

ARTICLE XII - EXHIBITS AND SCHEDULES

12.1 **Schedules:** Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both parties.

ARTICLE XIII - ENTIRE AGREEMENT

13.1 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

ARTICLE XIV - CONFLICT OF INTEREST

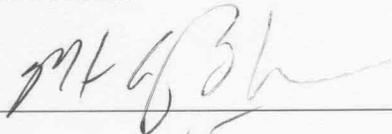
14.1 **Conflict of Interest:** No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

ARTICLE XV - EFFECTIVE DATE

15.1 **Effective Date:** Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and their corporate seals where applicable) affixed and attested to this _____ day of _____, 2013.

Witness/Attest:



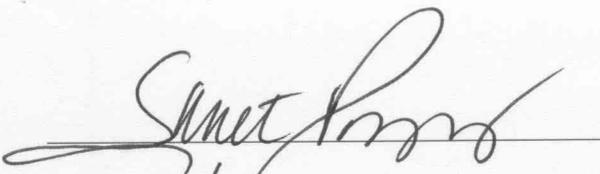
Dated: Nov 15, 2013

Witness/Attest:

Rukenstein & Associates, LLC

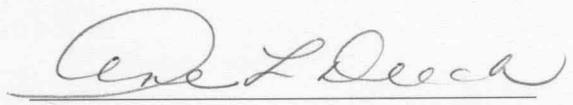
By: 
Ronald Rukenstein, Member/Manager

Borough of Woodbury Heights

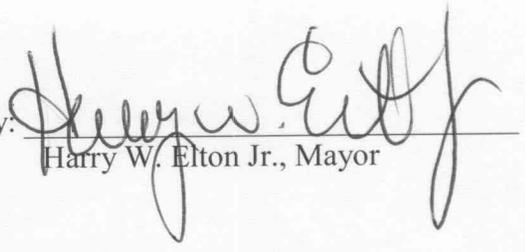


Dated: 11/26, 2013

Witness/Attest:

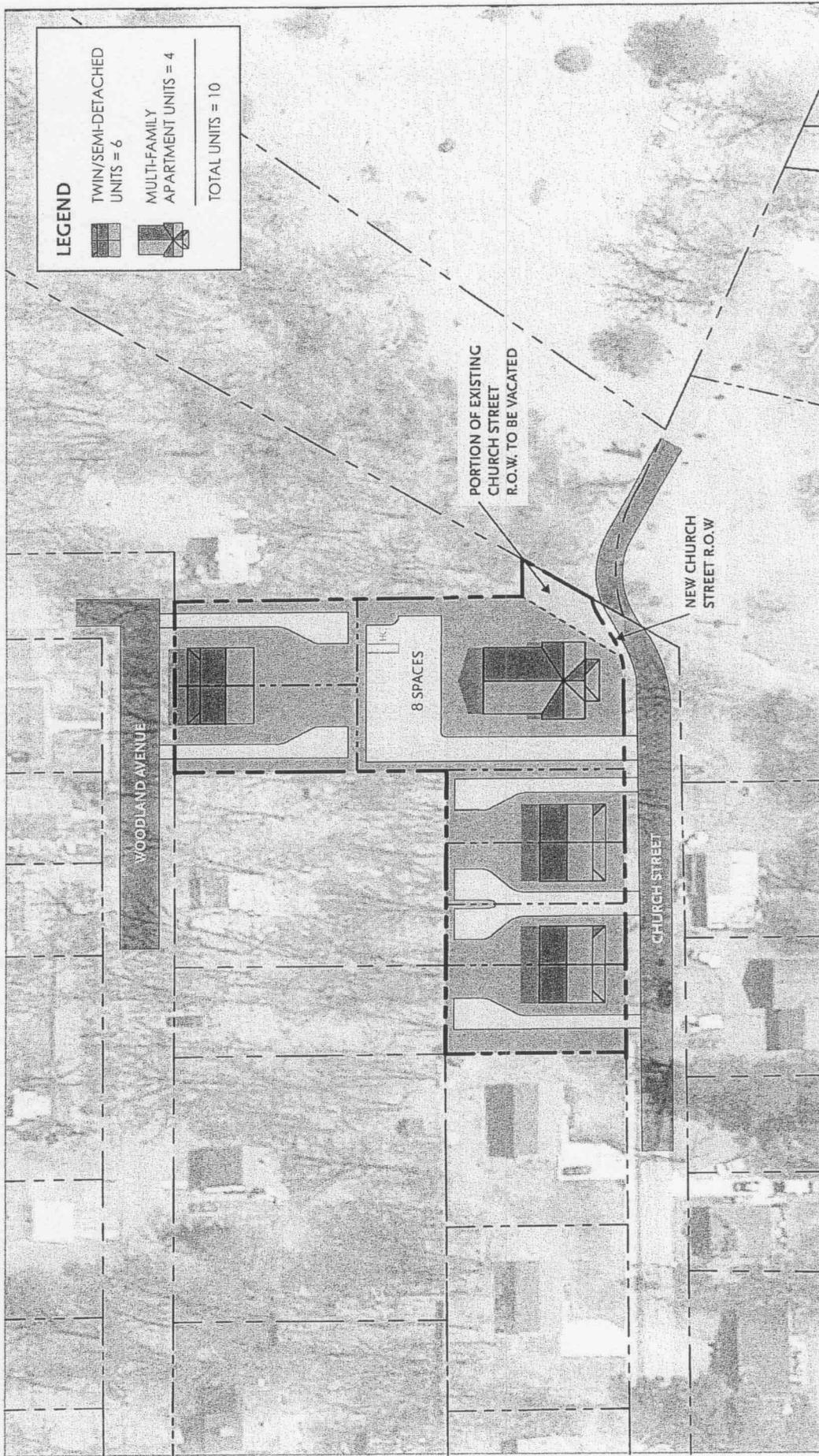


Dated: 11-26, 2013

By: 
Harry W. Elton Jr., Mayor

Planning Board of the Borough of
Woodbury Heights

By: 
Richard Phalines, Chairman



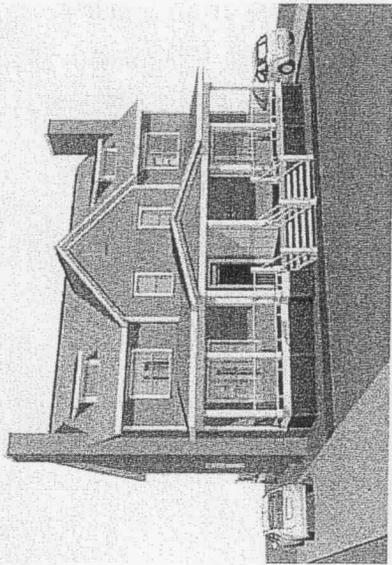
WOODLAND AVE. SITE AFFORDABLE HOUSING - BLOCK 91, LOT 6

Concept Site Plan - Affordable Housing

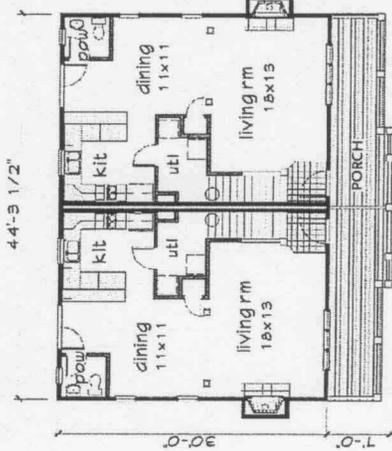
Woodbury Heights, NJ March 2013

Clarke Cation Hintz
Architecture
Planning
Landscape Architecture

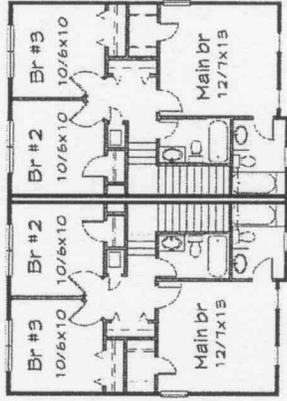




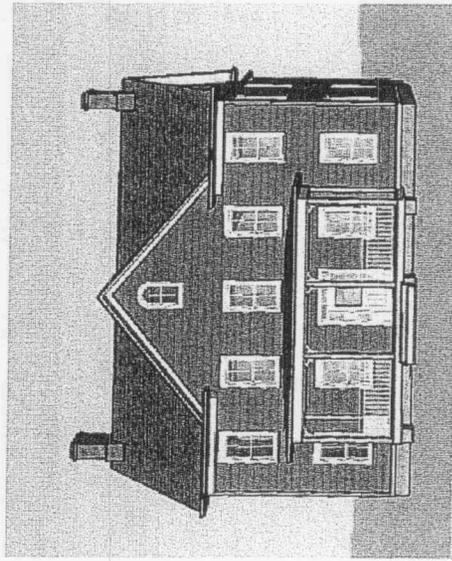
TWIN/SEMI-DETACHED PROTOTYPE (2 DU/BLDG.)



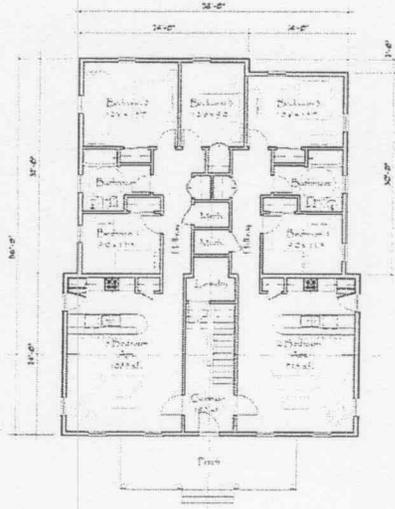
TWIN/SEMI-DETACHED: FIRST FLOOR N.T.S.



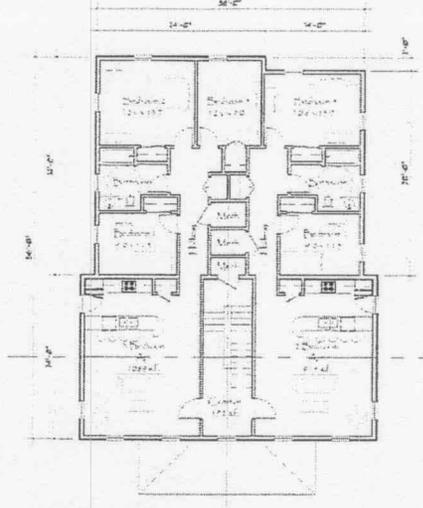
TWIN/SEMI-DETACHED: SECOND FLOOR N.T.S.



MULTI-FAMILY APARTMENT PROTOTYPE (4 APTS./BLDG.)



MULTI-FAMILY APARTMENT: FIRST FLOOR N.T.S.



MULTI-FAMILY APARTMENT: SECOND FLOOR N.T.S.

WOODLAND AVE. SITE AFFORDABLE HOUSING - BLOCK 91, LOT 6

Housing Prototypes

Woodbury Heights, NJ March 2013

EXHIBIT B
Zoning Ordinance

Exhibit C Project Schedule

<u>Task</u>	<u>Due Date</u>
1. Zoning Amendment Ordinance Adopted -----	November 27, 2013
2. Developer Agreement Executed -----	November 27, 2013
3. PILOT Agreement Executed -----	November 27, 2013
4. Apply for Planning Board Approvals -----	90 days after Court Approval
5. Agreement approved by the Court -----	December 31, 2013
6. Submit Financing Application-----	30 days after preliminary site approval
7. Project Closing-----	Within 6 months of funding award from NJ HMFA
8. Commence Construction -----	Within one week following Closing
9. Complete Construction -----	18 Months from Closing
10. Occupancy-----	9 Months from Construction Completion