

**RESOLUTION 36 – 2014
RESOLUTION AUTHORIZING AN AGREEMENT
FOR PAYMENT IN LIEU OF TAXES**

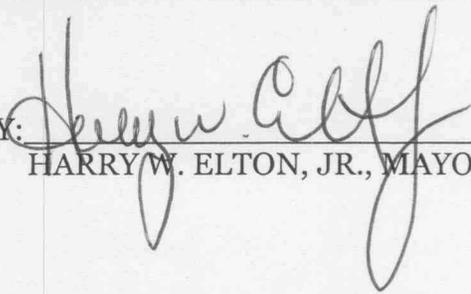
WHEREAS, the Borough has heretofore engaged in a Developer's Agreement with Ruckenstein & Associates, LLC as Developer of a supportive housing project for persons of low and moderate income consistent with the New Jersey Fair Housing Act N.J.S.A. 52:27D-301, et seq; and

WHEREAS, in order that the Borough meet its affordable housing obligations, engaging in an Agreement for payment in lieu of taxes is necessary to facilitate and support the Developer's application for subsidies or mortgage financing to construct the project; and

WHEREAS, the terms of the Developer's Agreement require engagement in a payment in lieu of taxes program to provide a realistic opportunity for the development and operation of affordable housing for a project at Block 6, Lot 91 of the Tax Maps;

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Woodbury Heights, with the Mayor concurring, that the attached Agreement for Payment in Lieu of Taxes is hereby approved and authorized.

BOROUGH OF WOODBURY HEIGHTS

BY: 

HARRY W. ELTON, JR., MAYOR

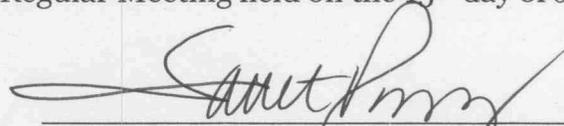
ATTEST:



JANET PIZZI, CLERK/ADMINISTRATOR

NOTICE

The foregoing Resolution was duly adopted by the Borough Council of the Borough of Woodbury Heights at the Regular Meeting held on the 15th day of January, 2014.



JANET PIZZI, CLERK/ADMINISTRATOR

AGREEMENT FOR PAYMENT IN LIEU OF TAXES

THIS AGREEMENT, made this 15th day of January, 2014, between Rukenstein and Associates, LLC, a Corporation of the State of New Jersey, having its principal office at 407 Pennington Titusville Road, Titusville, NJ 08560 (hereinafter the "Sponsor") and the Borough of Woodbury Heights, a municipal corporation in the County of Gloucester and State of New Jersey (hereinafter the "Municipality").

WITNESSETH

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

1. This Agreement is made 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.*) (hereinafter "HMFA Law") and a Resolution of the Governing Body of the Municipality dated Jan. 15, 2014, (the "Resolution") and with the approval of the New Jersey Housing and Mortgage Finance Agency (hereinafter the "Agency"), as required by N.J.S.A. 55:14K-37.
2. The Project is or will be situated on roughly a 0.79 acre parcel of land designated as Block 91, Lot 6 on the Official Assessment Map of the Borough of Woodbury Heights, (hereinafter "Subject Property").
3. The Project shall be defined as follows: A minimum of 10 affordable, non-age restricted units for special needs and supportive housing located at the Subject Property as further described in a Developer's Agreement between the Borough of Woodbury Heights, the Planning Board of the Borough of Woodbury Heights and Rukenstein & Associates, LLC dated Nov. 26, 2013.
4. As of the date the Sponsor executes a first mortgage upon the Project in favor of the Agency (hereinafter referred to as the "Agency Mortgage"), the land and improvements comprising the Project shall be exempt from real property taxes, provided that the Sponsor shall make payments in lieu of taxes to the Municipality as provided hereinafter. The exemption of the Project from real property taxation and the Sponsor's obligation to make payments in lieu of taxes shall not extend beyond the date on which the Agency Mortgage is paid in full, which, according to the HMFA Law, may not exceed fifty (50) years.
5. (a) For projects receiving construction and permanent financing from the Agency, the Sponsor shall make payment to the Municipality of an annual service charge in lieu of taxes in such amount as follows:
 - (1) From the date of the execution of the Agency Mortgage until the date of substantial completion of the Project, the Sponsor shall make payment to the municipality in an amount equal to the full assessed value of the property in effect at the time this Agreement is executed (pursuant to the HMFA Law, the annual amount may not exceed the amount of taxes due

on the property for the year preceding the recording of the Agency Mortgage). As used herein, "Substantial Completion" means the date upon which the Municipality issues the Certificate of Occupancy for all units comprising the Project.

- (2) From the date of Substantial Completion of the Project and for the remaining term of the NJHMFA Mortgage, the Sponsor shall make payment to the Municipality in an amount equal to five (5) percent of Project Revenues.
 - (b) For Projects receiving permanent financing only from the Agency, the Sponsor shall make payment to the Municipality in an amount equal to five (5) percent of Project Revenues from the date of the Agency Mortgage and for the remaining term of the Agency Mortgage.
 - (c) As used herein, "Project Revenues" means the total annual gross rental or carrying charge and other income of the Sponsor from the Project less the costs of utilities furnished by the Project, which shall include the costs of gas, electricity, heating fuel, water supplied, and sewage charges, and less vacancies if any.
 - (d) The amount of payment in lieu of taxes to be paid pursuant to paragraphs (a) or (b) and (c) above is calculated in Exhibit "A" attached hereto. It is expressly understood and agreed that the revenue projections provided to the Municipality as set forth in Exhibit "A" and as part of the Sponsor's application for an agreement for payments in lieu of taxes are estimates only. The actual payments in lieu of taxes to be paid by the Sponsor shall be determined pursuant to Section 6 below.
- 6.(a) Payments by the Sponsor shall be made on a quarterly basis in accordance with bills issued by the Tax Collector of the Municipality in the same manner and on the same dates as real estate taxes are paid to the Municipality and shall be based upon Project Revenues of the previous quarter. No later than three (3) months following the end of the first fiscal year of operation after (i) the date of Substantial Completion (for projects receiving construction and permanent financing) or (ii) the date of the Agency Mortgage (for projects receiving permanent financing only) and each year thereafter that this Agreement remains in effect, the Sponsor shall submit to the Municipality a certified, audited financial statement of the operation of the Project (the "Audit"), setting forth the Project Revenues and the total payments in lieu of taxes due to the Municipality calculated at 5 percent of Project Revenues as set forth in the Audit (the "Audit Amount"). The Sponsor simultaneously shall pay the difference, if any, between (i) the Audit Amount and (ii) payments made by the Sponsor to the Municipality for the preceding fiscal year. The Municipality may accept any such payment without prejudice to its right to challenge the amount due. In the event that the payments made by the Sponsor for any fiscal year shall exceed the Audit Amount for such fiscal year, the Municipality shall credit the amount of such excess to the account of the Sponsor.

- (b) All payments pursuant to this Agreement shall be in lieu of taxes and the Municipality shall have all the rights and remedies of tax enforcement granted to Municipalities by law just as if said payments constituted regular tax obligations on real property within the Municipality. If, however, the Municipality disputes the total amount of the annual payment in lieu of taxes due it, based upon the Audit, it may apply to the Superior Court, Chancery Division for an accounting of the service charge due the Municipality, in accordance with this Agreement and HMFA Law.
 - (c) In the event of any delinquency in the aforesaid payments, the Municipality shall give notice to the Sponsor and NJHMFA in the manner set forth in 10(a) below, prior to any legal action being taken.
7. The tax exemption provided herein shall apply only so long as the Sponsor or its successors and assigns and the Project remain subject to the provisions of the HMFA Law and Regulations made thereunder and the supervision of the Agency, but in no event longer than the term of the Agency Mortgage. In the event of (a) a sale, transfer or conveyance of the Project by the Sponsor or (b) a change in the organizational structure of the Sponsor, this Agreement shall be assigned to the Sponsor's successor and shall continue in full force and effect so long as the successor entity qualifies under the HMFA Law or any other state law applicable at the time of the assignment of this Agreement and is obligated under the Agency Mortgage.
8. Upon any termination of such tax exemption, whether by affirmative action of the Sponsor, its successors and assigns, or by virtue of the provisions of the HMFA Law, or any other applicable state law, the Project shall be taxed as omitted property in accordance with the law.
9. The Sponsor, its successors and assigns shall, upon request, permit inspection of property, equipment, buildings and other facilities of the Project and also documents and papers by representatives duly authorized by the Municipality. Any such inspection, examination or audit shall be made during reasonable hours of the business day, in the presence of an officer or agent of the Sponsor or its successors and assigns.
10. Any notice or communication sent by either party to the other hereunder shall be sent by certified mail, return receipt requested, addressed as follows:
- (a) When sent by the Municipality to the Sponsor, it shall be addressed to Rukenstein & Associates, LLC, Po Box #1, 407 Pennington Titusville Road, Titusville, NJ 08560 or to such other address as the Sponsor may hereafter designate in writing and a copy of said notice or communication by the Municipality to the Sponsor shall be sent by the Municipality to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.
 - (b) When sent by the Sponsor to the Municipality, it shall be addressed Janet Pizzi,

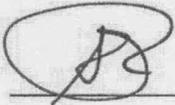
Municipal Clerk/Administrator, Borough of Woodbury Heights, 500 Elm Avenue, Woodbury Heights, NJ 08097 or to such other address as the Municipality may designate in writing; and a copy of said notice or communication by the Sponsor to the Municipality shall be sent by the Sponsor to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.

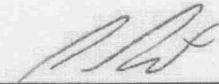
11. In the event of a breach of this Agreement by either of the Parties hereto or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court, Chancery Division, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the HMFA Law.
11. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a sufficient number of counterparts to evidence the execution of this Agreement by each party hereto.

ATTEST

SPONSOR:

RUKENSTEIN & ASSOCIATES, LLC, LLC



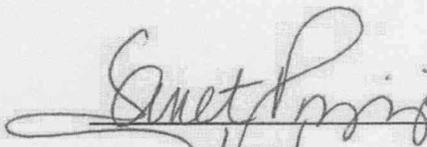
By: 
_____ Ron Rukenstein, Member/Manager

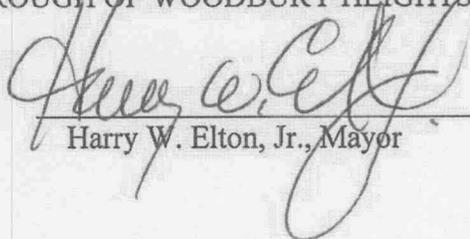
Date: 1/28, 2014

ATTEST

MUNICIPALITY:

BOROUGH OF WOODBURY HEIGHTS



By: 
_____ Harry W. Elton, Jr., Mayor

Date: 1/15, 2014

Pilot Agreement